

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

Case No. IT-98-32/1-T

IN THE TRIAL CHAMBER

Before: President Patrick Robinson, Presiding Judge
Judge Christine Van den Wyngaert
Judge Pedro David

Registrar: Mr. John Hocking

Date Filed: 13 May 2009

THE PROSECUTOR

v.

**MILAN LUKIĆ &
SREDOJE LUKIĆ**

***Public
with Confidential Annexes A-C***

MILAN LUKIĆ'S FINAL TRIAL BRIEF AND SUBMISSIONS

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Pursuant to Rule 86(B) of the Rules of Procedure and Evidence of the Tribunal, the Defense of Milan Lukić hereby files its Final Trial Brief and Submissions, setting forth its analysis relating to the evidence led at trial.

In doing so, the Defence notes that the time, resource, and word constraints upon the completion of this written submission did not permit a full discussion of, among others:

- all witness inconsistencies of Prosecution rebuttal witnesses and unindicted crimes brought in through backdoor charging;
- Discussion of the Prosecution's false accusations of contempt, including a discussion of Hamdija Vilić and the other related witnesses used by the Prosecution to try and distract from the paucity of their case in chief to try and obtain conviction by slander;
- Prosecutorial misconduct and the effects of obstruction and hidden evidence;
- the role of Bakira Hašević and other interested third parties against Milan Lukić that have had an affect on the proceedings.

The Defense reserves the right to present additional analysis on these points, the points herein, and analysis of briefs filed by other parties in a closing statement, pursuant to Rule 86(A) of the Rules of Procedure and Evidence. Nevertheless, the Defence would invite the Chamber to review a totality of the evidence and totality of the Record in its deliberations.

The Defense had hoped to take time to analyze the new evidence that came into this trial upon reconsideration just Monday by confidential Decision of the Trial Chamber, and pending all confidential filings of today's date. However, the Defense respectfully reserves the right to make further submissions or refilings if necessary in regard to those two pieces of evidence.

I. INTRODUCTION

“The common people remember and tell of what they are able to grasp and what they are able to transform into legend.” -The Bridge on the River Drina, Ivo Andrić

1. This Final Brief will discuss the burden of proof, the application of the jurisprudence of the Tribunal as it regards criminal liability, and the law of individual responsibility under Article 7(1) of the Statute of the Tribunal; however, none of this can be discussed without first understanding the context of the region and events to better understand the Indicted allegations.

2. This case evolves out a history of tragic events in a close-knit community historically in the pathway of the Ottoman Empire, existing on the road between the east and the west, and especially vulnerable to the influence of power-seeking regimes. Governing forces reawakened Višegrad's ethnic tensions in the 1990s, the chapter of the region's tumultuous history this Chamber will now examine.

3. Milan Lukić is not a monster. In the months leading up to the Indictment, Milan Lukić returned to his childhood home in Višegrad to check on his parents from spending time abroad as a bartender. Upon his return, he was mobilized in the police as a reservist.¹

4. Hearsay being allowed at this Tribunal, in this case the hearsay has escalated to a level of storytelling. Here, hearsay and rumor became lore passed along in cafes and on street corners, and more importantly, the refugee camps, gradually acquiring new details with each telling like the childhood game of 'telephone' or the adulthood game of gossip. The name 'Milan Lukić' mistakenly became one of those details carelessly inserted in the chain.

¹ T.3846/4-3855/18.

It might also be inferred that Milan Lukić, a mere bartender, Mitar Vasiljević, the town drunk, and Sredoje Lukić, a veteran police officer, are being used as scapegoats to divert attention from key members of Višegrad's 1992 leadership regime including Ristro Perisic, the Commander of the Police, and Brane Savovic, the President of the SDS Party and Head of the Crisis Staff. It is highly unlikely that three lowly, ordinary citizens would have had the power to run over Višegrad's existing power structure with impunity.

5. However, for these Chambers of an International Criminal Tribunal, being swept up into the accumulations of the war stories retold over the last 16 years is not enough for a conviction. In a direct commission case accusing a man of being personally responsible for the crimes alleged, the Defense puts forth that the evidence does not sustain a conviction of Mr. Milan Lukić on any of the Counts of the Indictment. This being a criminal trial with standards of proof and evidence such that the Prosecution must prove beyond a reasonable doubt that these events happened at the hands of Milan Lukić with all requisite intent and in the context of a larger plan, the Prosecution's case fails.

II. STANDARD OF PROOF: REASONABLE DOUBT AND THE PRESUMPTION OF INNOCENCE

6. Pursuant to the acts alleged in the Indictment, the Accused is charged under Articles 7(1) of the Statute, on the basis of individual criminal responsibility for the crimes enumerated in Articles 3 and 5 of the Statute as described in the Second Amended Indictment. Although not charged pursuant to Article 7(3) as a command-superior, the Indictment does infer and the Prosecution has throughout the trial wrongfully made reference to Milan Lukić as the "commander" of the White Eagles, among other assertions. It is respectfully submitted that Article 7(3) liability thus cannot be asserted against Milan Lukić or utilized as a factor in sentencing.

7. The Second Amended Indictment filed on 27 February 2006 against the Accused, Mr. Milan Lukić and Mr. Sredoje Lukić, charges the following acts:

- **Count 1: Article 5 Persecutions (as lesser-included offenses of the other crimes named in the Indictment):** Milan Lukić, Sredoje Lukić, and Mitar Vasiljević are all charged with persecution based on political, racial and religious grounds, allegedly occurring between 7 June 1992 and 10 October 1994.

- **Counts 2-5: Article 3 & 5 Murder, Article 3 Cruel Treatment & Article 5 Inhumane Acts stemming from the Drina River incident:** It is alleged that on or about 7 June 1992, Milan Lukić along with Mitar Vasiljević led seven men to the Drina River to be killed.
- **Counts 6-7: Article 3 & 5 Murder stemming from the Varda Factory Incident:** Milan Lukić along with other uncharged individuals is alleged to have killed seven Bosnian Muslim men at the Varda factory.
- **Counts 8-12: Article 5 Extermination, Article 3 & 5 Murder, Article 3 Cruel Treatment & Article 5 Inhumane Acts stemming from the Pionirska Street Incident:** It is alleged that on or about 14 June 1992, Milan Lukić, Sredoje Lukić, and Mitar Vasiljević murdered approximately 70 Bosnian Muslim women, children, and elderly men in a house on Pionirska Street in Višegrad, by barricading the victims in one room of the house, setting the house on fire, and then firing automatic weapons at those people who tried to escape through the windows, killing some and injuring others.
- **Counts 13-17: Article 5 Extermination, Article 3 & 5 Murder, Article 3 Cruel Treatment & Article 5 Inhumane Acts stemming from the Bikavac incident:** It is alleged that on or about June 27, 1992, Milan Lukić, Sredoje Lukić, and Mitar Vasiljević murdered approximately 70 Bosnian Muslim women, children, and elderly men in a house in the settlement of Bikavac, near Višegrad, by forcing the victims into the house, barricading all the exits, and throwing several explosive devices into the house.
- **Counts 18-19: Article 3 & 5 Murder stemming from the Koric killing:** It is alleged that sometime during June 1992, Milan Lukić unlawfully killed Hajira Koric.
- **Counts 20-21: Article 3 Cruel Treatment & Article 5 Inhumane Acts stemming from the Uzamnica Barracks allegations:** Milan Lukić and Sredoje Lukić are alleged with frequently entering the detention camp at the Uzamnica military barracks, located five kilometers outside Višegrad, and repeatedly striking detainees with their rifles and kicking them with their boots.

8. Milan Lukić has pleaded not guilty to all counts alleged against him in the governing Second Amended Indictment, asserting his full rights of due process and confrontation.

A. PRESUMPTION OF INNOCENCE AND REASONABLE DOUBT

9. All proceedings before this Tribunal must be held in consonance with the rights of the Accused as enumerated in the ICTY Statute at Articles 20 and 21. The right to a fair and expeditious trial being the cornerstone of the rights granted to an Accused, also included in the fundamental rights of an Accused are the right to be “immediately informed of the

charges against him”² and to be “informed promptly and in detail in a language which he understands of the nature and cause of the charge against him”.³ Further, an Accused has the right “to have adequate time and facilities for the preparation of his Defense and to communicate with counsel of his own choosing”.⁴

10. All persons shall be equal before the International Tribunal⁵ and all should be afforded the same rights and permissions in the presentation of their cases.

11. Article 21(3) of the Statute sets forth: “The Accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.”

12. All allegations must be proven beyond a reasonable doubt in accordance with the standard set forth by ICTY Rule 87(A) stating: “A finding of guilt may be reached only when a majority of the Trial Chamber is satisfied that guilt has been proved beyond reasonable doubt.” This Rule comports with, and is augmented by, the Tribunal’s jurisprudence and the fundamental principles of international humanitarian law that support a presumption of innocence. “The standard of proof at trial requires that a Trial Chamber may only find an accused guilty of a crime if the Prosecution has proved each element of that crime and of the mode of liability, and any fact which is indispensable for the conviction, beyond reasonable doubt.”⁶ “At the conclusion of the case the accused is entitled to the benefit of the doubt as to whether the offence has been proved.”⁷

13. Where multiple Accused are tried together, the case against each Accused must be considered separately and on each count.⁸ In a joint trial, the Trial Chamber must consider the case against each Accused and each Count in the Indictment separately. Thus, with respect to each of the counts charged against the Accused, the Trial Chamber must determine whether it is satisfied beyond reasonable doubt, on the basis of the evidence, that every element of that crime and the forms of liability charged in the Indictment have been established.

² Updated ICTY Statute, 8 February 2008, Article 20(2).

³ *Id.* at Article 21(4)(a).

⁴ *Id.* at Article 21(4)(b).

⁵ ICTY Statute, Article 21(1).

⁶ *Prosecutor v. Blagojević*, IT-02-60,(Appeals Judgement) 9 May 2007, para.226. (“*Blagojević* AJ”).

⁷ *Prosecutor v. Delalić et al.*, IT-96-21(Trial Judgement) 16 November 1998, para.601. (“*Delalić* TJ”).

⁸ *Prosecutor v. Kordić et al.*, IT-95-14/2, (Trial Judgement) 26 February 2001, para.17 (“*Kordić* TJ”).

14. According to the prevailing legal jurisprudence, when analyzing the evidence, the Trial Chamber must determine that the “beyond a reasonable doubt standard” has been satisfied so that the conclusion reached is the only reasonable conclusion - a conclusion that cannot be called into question by another rational conclusion.⁹

15. The Office of the Prosecutor bears the burden of proof and thereby must establish each and every element and factor of each count of the Indictment for culpability on each charge. If the Trial Chamber, at that time, has any doubt in the case presented against the Accused, the benefit of doubt goes to the Accused and he must be acquitted.

16. It is submitted that the analysis within this brief demonstrates that the Prosecution has failed to establish guilt “beyond reasonable doubt.”¹⁰

B. HEARSAY EVIDENCE

17. Hearsay evidence is admitted at this Tribunal because of an early policy and practicality decision as to the conduct of trials. This determination did nothing, however, to improve the quality of hearsay evidence and the centuries of experience that ban it from consideration in many enlightened jurisdictions that continue to apply and be relevant to the Tribunal’s jurisprudence. Hearsay evidence by its very nature is, and remains unreliable. The Chamber is thus burdened with the task of determining whether each bit of hearsay evidence admitted contains sufficient circumstantial guarantees of trustworthiness to allow it to be considered in arriving at a conclusion.

18. It is important to consider the issue as to which the hearsay is offered. It is one thing to accept hearsay evidence to establish background information, it is quite another to allow it as evidence of a critical and decisive fact in the case. Likewise, probative value must depend on the fact that is being sought to be shown, particularly when it is purely by hearsay.

19. Many other factors may affect the probative value of hearsay evidence. It has been considered that “the source has not been the subject of solemn declaration and that its

⁹ *Prosecutor vs. Delalić, et al.*, IT-96-21-A, (Appeals Judgment) 8 April 2003, para.458. (“*Delalić AJ*”).

¹⁰ *Delalić*, TJ, paras.600-603.

reliability may be affected by a potential compounding of errors of perception and memory.”¹¹

20. Additional factors relevant to the probative value of such hearsay evidence to take into account are “[t]he absence of the opportunity to cross-examine the person who made the statements” and if the same is first-hand or otherwise more removed.¹²

21. Thus, where the large bulk of the Prosecution’s case as to Milan Lukić is based entirely or in large part on hearsay, extreme caution must be exercised.

C. CIRCUMSTANTIAL EVIDENCE

22. A similar concern exists insofar as a significant part of the case relies upon circumstantial evidence.

23. The Trial Chamber must exercise caution in drawing conclusions on the basis of circumstantial evidence. The Appeals Chamber has set a high threshold for conviction by determining that a finding of guilt based on circumstantial evidence must be “the ONLY reasonable conclusion available,” and that “another conclusion which is also reasonably open from that evidence, and which is consistent with the innocence of the accused” must lead to acquittal.¹³

III. LAW AND ELEMENTAL BURDENS

A. REQUIREMENTS OF ARTICLES 3 & 5

24. In order to hold Mr. Milan Lukić liable for any of these specific counts, the Prosecution must have proven not only the elements of the charged counts and the mode of liability, as follows below, but also that these charges are within the context proper for charging under Article 3 and 5 of the ICTY Statute. For the charge under Article 3, in addition to being satisfied the crimes charged fall under this provision, there are two precursory requirements to be satisfied: 1) it must be established that there was an armed

¹¹ *Prosecutor vs. Simić*, IT-95-9/2, (Trial Judgment) 17 Oct. 2002, para.23 (“*Simić* TJ”).

¹² *Prosecutor vs. Brđjanin*, IT-99-36 (Trial Judgment) 3 April 2007, para.28. (“*Brđjanin* TJ”).

¹³ *Delalić* AJ, para.458 (emphasis in original).

conflict, whether international or internal, at the time material to the Indictment; and, 2) that the acts of the Accused are closely related to this armed conflict.¹⁴ Likewise, for those charged under Article 5, the Prosecutor must show:

- there must be an attack;
- the acts of the accused must be part of the attack;
- the attack must be directed against any civilian population;
- the attack must be widespread and systematic;
- the perpetrator must know that his acts constitute part of a pattern of widespread or systematic crimes directed against a civilian population and know that his acts fit into such a pattern.¹⁵

25. In order to rise to a level of culpability under Article 5, the attacks must be on a civilian population; however, in addition, the crimes must also constitute part of a pattern of widespread or systematic crimes:

Crimes which are unrelated to widespread or systematic attacks on a civilian population should not be prosecuted as crimes against humanity. Thus, to convict an accused of crimes against humanity, it must be proved that the crimes were related to the attack on a civilian population (occurring during an armed conflict) and that the accused knew that his crimes were so related.¹⁶

26. Whether an attack is widespread or systematic is contingent upon the circumstances. Upon identification of the civilian population allegedly targeted, the widespread or systematic nature of the attack must be assessed, in light of the means, methods, resources, and result of the attack upon the population.¹⁷

27. If committed by perpetrators acting for personal reasons which were not sufficiently connected to an attack on the civilian population, the underlying charges themselves may not rise to a violation under Article 5.

28. Factors that may be considered are: [t]he consequences of the attack upon the targeted population, the number of victims, the nature of the acts, the possible participation of officials or authorities, or any identifiable patterns of crimes.¹⁸

¹⁴ *Prosecutor v. Boškoski & Tarčulovski*, IT-04-82, (Trial Judgement) 10 July 2008, para.173 (“*Boškoski TJ*”).

¹⁵ *Prosecutor v. Kunarac et al.*, IT-96-23 & IT-96-23/1, (Appeal Judgement) 12 June 2002, para.85. (“*Kunarac AJ*”).

¹⁶ *Prosecutor v. Tadić*, IT-94-1, (Appeals Judgement) 15 July 1999, para.271 (“*Tadić AJ*”).

¹⁷ *Id.* at para.95.

¹⁸ *Id.* at para.95.

29. Logically, a civilian population must predominantly be made up of civilians.¹⁹ Civilians are defined as "... persons not taking part in hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds detention, or any other cause."²⁰

30. The phrase "directed against" indicates that the civilian population must be the primary object of the attack.²¹

31. Whether that is so may be determined on the basis of the following non-exhaustive list of indicia: the means and method used in the course of the attack; the status of the victims, their number, the discriminatory nature of the attack; the nature of the crimes committed in its course; the resistance to the assailants at the time, and the extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirements of the laws of war. To the extent that the alleged crimes against humanity were committed in the course of an armed conflict, the laws of war provide a benchmark against which the Chamber may assess the nature of the attack and the legality of the acts committed in its midst.

32. The law requires that "... enough individuals were targeted in the course of the attack, or that they were targeted in such a way as to satisfy the Chamber that the attack was in fact directed against a civilian population."²²

33. Accordingly, an attack against a limited and randomly selected number of individuals falls short of the requirements for crimes against humanity or the laws and customs of war.²³

34. Crimes against humanity require a nexus between the attack and the perpetrator's acts. It must be shown that the perpetrator's act, by its nature or consequences, is objectively part of the attack.²⁴

¹⁹ *Prosecutor v. Blagojević and Jokic*, IT-02-60, (Trial Judgement) 17 January 2005, para.544.

²⁰ *Ibid.*

²¹ *Kunarac* AJ, para. 91.

²² *Id.*, para. 90.

²³ *Ibid.*

²⁴ *Id.* at para. 99.

35. Consequently, an isolated act does not constitute a crime against humanity where it is so far removed from the attack on a civilian population that in light of the relevant circumstances and context the act cannot reasonably be said to have been part of the attack.²⁵

36. The nexus between the attack and the perpetrator's act requires a second element. There must be knowledge on the part of the accused that there is an attack on the civilian population and that his act is part thereof.²⁶ These elements, in conjunction with the intent to commit the underlying offence, make up the *mens rea* required for crimes against humanity.

B. ELEMENTS OF ARTICLES 3 & 5 FOR MURDER

37. The elements of murder, under both Article 3 and 5 are as follows:

- the victim is dead,
- the death was caused by an act or omission of the perpetrator, and
- the act or omission was done with intention to kill, or to inflict grievous bodily harm, or to inflict serious injury, in the reasonable knowledge that such act or omission was likely to cause death.²⁷

C. ELEMENTS OF ARTICLE 5 FOR EXTERMINATIONS

38. As set for the in the trial of *Prosecutor v. Vasiljević*, the elements of extermination are as follows:

- The material element of extermination consists of any one act or combination of acts which contributes to the killing of a large number of individuals (*actus reus*).
- The offender must intend to kill, to inflict grievous bodily harm, or to inflict serious injury, in the reasonable knowledge that such act or omission is likely to cause death, or otherwise intends to participate in the elimination of a number of individuals, in the knowledge that his action is part of a vast murderous enterprise in which a large number of individuals are systematically marked for killing or killed (*mens rea*).²⁸

²⁵ *Id.*, para. 100.

²⁶ *Id.*, para. 99.

²⁷ *Prosecutor v. Vasiljević*, IT-98-32, (Trial Judgment) 29 Nov 2002, para.205 (“*Vasiljević TJ*”).

²⁸ *Id.*, para. 229.

39. Several ICTY Judgments have determined that the *mens rea* of extermination is similar to the *mens rea* for murder. Essentially that, “the accused intended, by his acts or omissions, either killing on a large scale, or the subjection of a widespread number of people, or the systematic subjection of a number of people, to conditions of living that would lead to their deaths.”²⁹ The perpetrator must have the intent to kill a mass of people (but no specific number is required). This standard has been employed most often in cases where liability is alleged through JCE or command responsibility.

40. Under this interpretation, the Prosecution must prove beyond a reasonable doubt that the Accused had the intention to kill persons on a massive scale or to create conditions of life that led to the death of a large number of people.³⁰

41. After conducting a thorough historical examination³¹, the Trial Chamber in *Prosecutor v. Vasiljević* found that for the *mens rea* of extermination “the offender must intend to kill, to inflict grievous bodily harm, or to inflict serious injury, in the reasonable knowledge that such an act or omission is likely to cause death, or otherwise intends to participate in the elimination of a number of individuals, in the knowledge that his action is part of a vast murderous enterprise in which a large number of individuals are systematically marked for killing or killed.”³²

42. This *mens rea* element stands apart because in addition to the intent to kill or harm, the perpetrator “must have known of the vast scheme of collective murder and have been willing to take part therein.”³³ In terms of a discriminatory motive, the *Vasiljević* Judgment echoed other ICTY Decisions: “it need not be established that [the perpetrator] acted on any discriminatory grounds.”³⁴

²⁹ *Prosecutor v. Krstić*, IT-98-33 (Trial Judgment) 2 August 2001, para.495; (“*Krstić* TJ”) *Prosecutor v. Kordić & Čerkez*, IT-95-14/2 (Trial Judgment) 26 Feb. 2001, para.259; (“*Kordić & Čerkez* TJ”); *Brdjanin*, TJ, para.388.

³⁰ *Prosecutor v. Stakić*, IT-97-24 (Trial Judgment) 31 July 2003, para.641, (“*Stakić* TJ”): “the perpetrator’s mental state encompasses all the objective elements of the crime; the annihilation of a mass of people.” *See also, Brdjanin* TJ, para. 388.

³¹ Trial Chambers looked to the history of extermination as a crime against humanity from Nuremberg on. No other extermination judgement at this Tribunal conducts such a thorough historical study on the matter.

³² *Vasiljević*, TJ, para. 224.

³³ *Id.* para 228, *Citing* IMT Judgment in respect of Saukei, p.114.

³⁴ *Id.*

43. While other Chambers agree that extermination most often requires some element of organization, they have disagreed with the *Vasiljević* analysis requiring “knowledge of a murderous plan.” For example, in *Stakić*, Chambers found, “the massiveness of the crime automatically assumes a substantial degree of preparation and organization which may serve as indicia for the existence of a murderous ‘scheme’ or ‘plan,’ but not, as proposed by the Defense, of a ‘vast scheme of collective murder’ as a separate element of the plan.”³⁵ However, as a direct commission case, and the standard applied to the case of the co-Accused, the *Vasiljević* standard is the most reasonable to apply in the present matter.

D. ELEMENTS OF ARTICLE 5 FOR PERSECUTIONS

44. In *Kupreskić et al.*, the Appeals Chamber conducted an in-depth examination of the history of persecution as a crime against humanity and found that when there is no specific definition of a crime, the Tribunal should look to several factors: i) customary international law, ii) general principles of international criminal law, or lacking such principles, (iii) general principles of criminal law common to the major legal systems of the world or lacking such principles, (iv) general principles of law consonant with the basic requirements of international justice.³⁶ With these principles, the jurisprudence of the Tribunal and the historical record in mind, Chambers concluded that a charge of persecutions must include, of course, those elements required for all crimes against humanity under the statute, but additionally it must be an act or omission that:

- discriminates in fact and which denies or infringes upon a fundamental right laid down in international customary or treaty law (the *actus reus*); and
- was carried out deliberately with the intention to discriminate on one of the listed grounds, specifically race, religion or politics (the *mens rea*).³⁷

45. In contrast to other crimes against humanity, the *mens rea* must be one of intent to commit the underlying act where the perpetrator had the special intent to discriminate on racial, religious, or political grounds.³⁸ “It is not sufficient for the accused to be aware that he

³⁵ *Stakić* TJ, para.640.

³⁶ *Prosecutor v. Kupreskić et al.*, IT-95-16, (Appeal Judgment) 23 Oct. 2001, para.577.

³⁷ *Prosecutor v. Stakić*, IT-97-24, (Appeals Judgement)16 Nov.2006, para.327 (“*Stakić* AJ”).

³⁸ *Id.*, para.328.

is in fact acting in a way that is discriminatory; he must consciously intend to discriminate.”³⁹
 Further, the result of the act must, in fact, be discriminatory; intent alone is not enough.⁴⁰

46. In the present case, the following crimes have been charged as persecution:

- Murder as persecution;
- Cruel and inhumane treatment;
- Unlawful detention and confinement;
- Harassment, humiliation, terrorization and psychological abuse;
- Theft of personal property and the destruction of houses of Bosnian Muslims and other non-Serb civilians.

47. The most widely accepted and used definition for the *actus reus* of persecutions is: “an act or omission which discriminates in fact and which denies or infringes upon a fundamental right laid down in international customary or treaty law.”⁴¹ The *actus reus* can also be framed as “the occurrence of a persecutory act or omission on one of the listed grounds, specifically race, religion or politics.”⁴² This act or omission can be a single act or series of acts.⁴³ However, the *Kupreskić* Appeals Chamber, whose decision was rooted in a thorough historical examination, found that persecutions are usually used to “describe a series of acts rather than a single act” and that “acts of persecutions will usually form part of a policy or at least of a patterned practice and must be regarded in their context.”⁴⁴ The Zagreb District Court has also found that persecutory acts are often committed pursuant to a discriminatory policy or a widespread discriminatory practice.⁴⁵ Ultimately, discriminatory acts charged as persecutions are usually not considered in isolation - they must be examined in their context and weighed for their cumulative effect.⁴⁶

E. ELEMENTS OF ARTICLE 3 FOR CRUEL TREATMENT OR ARTICLE 5 FOR INHUMANE TREATMENT

48. Inhumane Acts and Cruel Treatment are very similar and encompass crimes not specifically enumerated in Tribunal’s Statute. The essential difference is that Inhumane Acts

³⁹ *Prosecutor v. Krnojelac* IT-97-25 (Trial Judgement) 15 March 2002, para.435 (“*Krnojelac* TJ”); *Vasiljević* TJ, para.248.

⁴⁰ *Krnojelac* TJ, para.432; *Vasiljević* TJ, para.245.

⁴¹ *Prosecutor v. Blaskić*, IT-95-14 (Appeal Judgment) 24 July 2004, para.131 (“*Blaskić* AJ”); *Prosecutor v. Kvočka*, IT-98-30/1, (Appeals Judgment) 28 Feb 2005, para.320 (“*Kvočka* AJ”).

⁴² *Prosecutor v. Tadić* IT-94-1 (Trial Judgement) 11 Nov 1999, para.715 (“*Tadić* TJ”).

⁴³ *Prosecutor v. Vasiljević*, IT-98-32 (Appeals Judgment) 25 Feb. 2004, para.113 (“*Vasiljević* AJ”).

⁴⁴ *Kupreskić* AJ, para.620.

⁴⁵ *Artuković*, Zagreb District Court Doc. No.K-1/84-61, 14 May 1986, p. 23.

⁴⁶ *Id.*, para. 620

fall under the umbrella of crimes against humanity while Cruel Treatment is a violation of the laws or customs of war. Otherwise, the elements of each charge “require proof of the same elements.”⁴⁷ Moreover, both the International Covenant on Civil and Political Rights and the American Convention of Human Rights link Cruel Treatment and Inhumane Acts.⁴⁸ While there are some slight differences between the two charges, an Accused must be charged with either Inhumane Acts or Cruel Treatment.

49. “Each offence functions as a residual category for serious charges under Articles 2, 3 and 5.”⁴⁹ The charges under Article 5 (Inhumane Acts- crime against humanity) and the under Article 3 (Cruel Treatment- war crime) contain the same elements.⁵⁰ The definitions for each charge only vary by the exact expressions used to outline the offences.

50. The elements of Inhumane Acts and Cruel Treatment are:⁵¹

- The occurrence of an act or omission of similar seriousness to the other enumerated acts under the Article;
- The act or omission caused serious mental or physical suffering or injury to constitute a serious attack on human dignity; and
- The act or omission was performed deliberately by the accused or a person or persons for whose acts and omissions he bears criminal responsibility.⁵²
- The act must be committed against a “protected person” or a “person taking no active part in the hostilities.”⁵³

51. Whether the act is grave enough to satisfy the “seriousness” element is a question of relativity. To assess the act, “consideration must be given to all factual circumstances”⁵⁴ including the personal characteristics of the victim (e.g.: age, gender, health), the context in which the crime was committed, and/or the nature of the act or omission.⁵⁵ Moreover, the acts must be as serious as the other crimes specifically provided for in the Statute.

⁴⁷ *Vasiljević* TJ, para.234. *citing Delalić* AJ, para.426; *Tadić* TJ, para.723; *Prosecutor v. Jelisić* IT-95-10 (Trial Judgment) 14 Dec. 1999, para.53 (“*Jelisić* TJ”), *Kordić* TJ, para.265; *Kronjelic* TJ, para.130.

⁴⁸ *Cited by Tadić* TJ, para.723.

⁴⁹ *Id.*

⁵⁰ *See e.g., Kronjelic* TJ, para.128-130.

⁵¹ *Prosecutor v. Naletilić and Martinović*, IT-98-34 (Trial Judgement) 31 March 2003, para.246 (“*Naletilić* TJ”).

⁵² *Vasiljević* TJ para.234; *Kronjelic* TJ, para.130.

⁵³ *Id.*; *Naletilić* TJ, para.246.

⁵⁴ *Vasiljević* TJ, para.235, *citing Delalić* TJ, para.536; *Jelisić* TJ, para.57; *Kunarac* TJ, para.501; *Kronjelic* TJ, para.132.

⁵⁵ *Id.*; *Kunarac* TJ, para.501; *Kronjelic* TJ, para.131; *Delalić* TJ, para.536. *See also Kayishema and Ruzindana* ICTR-95-1-T (Trial Judgment) 21 May 1999, para.151. (“*Kayishema* TJ”).

52. In addition to the *actus reus* of the crime, Inhumane Acts and Cruel Treatment require a *mens rea* element that “[i]s satisfied when the offender, at the time of the act or omission, had the intention to inflict serious physical or mental suffering or to commit a serious attack on the human dignity of the victim, or where he knew that his act or omission was likely to cause serious physical or mental suffering or a serious attack upon human dignity, and was reckless as to whether such suffering or attack would result from his act or omission.”⁵⁶

53. Inhumane Acts have been defined distinctly from Cruel Treatment as:

- An intentional act or omission, which judged objectively, is deliberate and not accidental, which causes serious mental harm or physical suffering or injury, or constitutes a serious attack on human dignity.
- Committed against a protected person.⁵⁷

54. The charge of cruel treatment is rooted in Common Article 3(1) of the Geneva Convention:

Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color religion or faith, sex, birth or wealth, or any other similar criteria. To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above mentioned persons: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture.⁵⁸

55. In contrast to Inhumane Acts, the victim of Cruel Treatment, as per the Geneva Convention, must not be or have been taking an active part in the hostilities:

- a. An intentional act or omission, which causes serious mental or physical suffering or injury of, constitutes a serious attack on human dignity.
- b. Committed against a person taking no active part in the hostilities.⁵⁹

56. Despite the differences in victim status, Chambers has found that “treatment may be cruel whatever the status of the person concerned.”⁶⁰

⁵⁶ *Kronjelac* TJ, para.132; *Kayishema* TJ, para.153; *Prosecutor v. Aleksovki*, IT-95-14/1 (Trial Judgement) 30 June 1999, para.56; (“*Alekovski* TJ”); *Vasiljević* TJ, para.236; *Prosecutor v. Orić*, IT-03-68 (Trial Judgement) 30 June 2006, para.746 (“*Oric* TJ”).

⁵⁷ *Delalić* AJ, para.426; *Blaskić* TJ, para.154.

⁵⁸ Geneva Convention, Common Article 3; *Cited in Tadić* TJ, para.723 and *Delalić* AJ, para.419.

⁵⁹ *Id.*, para.424.

⁶⁰ *Blaskić* TJ, para.186.

57. It should be noted that the relevant jurisprudence points to slight differences between Cruel Treatment and Inhumane Acts. For example, it is clear that every time an Inhumane Act under Article 5(i) is committed, “*ipso facto* cruel treatment under Article 3 is inflicted.” However, the reverse is not true; cruel treatment under Article 3 may not be covered by Article 5 if the widespread or systematic element is missing, “thus if the evidence proves the commission of the facts in question, a conviction should only be recorded for one of the two offences: inhumane acts, if the background conditions for crimes against humanity are satisfied, and if they are not, cruel treatment as a war crime.”⁶¹

58. These minor differences do not meet the standard outlined in the Tribunal’s jurisprudence that “each offence [must have a] materially distinct element not contained in the others.”⁶² The Appeals Chamber in the *Celebici* Judgement found,

The two crimes have essentially the same elements, with the possible qualification that the *actus reus* of inhuman treatment may be defined more broadly than cruel treatment, so that cruel treatment would be encompassed within inhuman treatment. The requirement that each offence has a unique element is therefore not satisfied.⁶³

59. Ultimately, “notions of cruel treatment within the meaning of Article 3 and of inhumane treatment set out in Article 5 of the Statute have the same legal meaning.”⁶⁴ While the background elements may be different for each charge, the *actus reus* and *mens rea* are identical and used to capture crimes not specifically enumerated in the Tribunal’s Statute. As a result, an accused may not be convicted of both charges for the same incident.

IV. FAILURE OF THE PROSECUTION TO MEET ITS BURDEN

A. THE PROSECUTION HAS FAILED TO MEET ITS BURDEN OF PROOF AS TO THE EXISTENCE OF AN ARMED CONFLICT

⁶¹ *Id.*

⁶² *Kordić* Appeal Judgment, para. 232.

⁶³ *Delalić* AJ, para.51, quoting the dissenting opinion of Judge David Hunt and Judge Mohamed Bennouna.

⁶⁴ *Jelisić* TJ, para. 52, citing the majority opinion in *Delalić*, *supra*.

60. To establish the existence of an armed conflict, the Prosecution has to prove that there was protracted armed violence in the temporal and geographic period of the Indictment.⁶⁵

*It must be proved that the crimes were related to the attack on a civilian population (occurring during an armed conflict) and that the accused knew that his crimes were so related.*⁶⁶

61. For an internal armed conflict to arise, the Prosecution must show that that situation was not mere banditry, or an unorganized or short-lived insurrection, which would not be subject to international humanitarian law.⁶⁷ More specifically it must be proven beyond reasonable doubt that:

- the hostilities were protracted in nature (i.e. the conflict had a sufficient level of intensity); and
- both parties to the conflict had a certain degree of organization.⁶⁸

62. In relation to the first limb of this test – the intensity of the conflict – the Defense submits that the Prosecution has failed to provide evidence of the intensity of the conflict, or that it lasted in a protracted manner so as to be qualified under this ground.

63. As to the organization, the Prosecution failed to produce any expert testimony as to either the organization and functioning of the alleged parties to this conflict. There has been a moving of the goal posts and a constant changing of the OTP case as to the organization of, or membership of, Milan Lukić in a paramilitary organization. We have had no proper evidence of the nature that would establish that type of organization and functioning that are necessary to trigger application of the applicable statute to the events alleged in the indictment. It is not enough to merely allege facts, then change one's theory and re-allege facts, as the Prosecution has done. They have an obligation to present evidence on this point, and this is simply something they have not done.

64. What was shown time and again is that in April 1992, the Uzice Corps came into town, and by all accounts, they were gone again by mid-May 1992.⁶⁹ While there was testimony about some changes in the region at that time, the Prosecution did not establish if

⁶⁵ *Prosecutor vs. Tadić*, Appeals Chamber, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para.70.

⁶⁶ *Tadić*, IT-94-1, Appeals Judgement, 15 July 1999, para.271 (“*Tadić* AJ”).

⁶⁷ *Tadić* TJ, para.561-562,628.

⁶⁸ *Delalić* TJ, para.183-184.

⁶⁹ T.833/2-7;2528/6-8;4416/22-4417/21.

and when an armed conflict actually began in the region. Moreover, it could be surmised that if the army was actually withdrawing from the region in mid-May, it would lead to the conclusion that there was no armed conflict in the region – otherwise, the reverse would be true and the army would have stayed to keep order and/or engage in any hostilities.

65. The Defense respectfully submits that the Prosecution should be put to strict proof beyond a reasonable doubt that:

- the alleged acts of the Accused charged under Article 3 were “closely related to” or “in furtherance of /under the guise of “ armed conflict⁷⁰; and
- the alleged acts of the Accused charged under Article 5 were linked temporally and geographically with the armed conflict.⁷¹

66. In relation to Article 3, the Defense asserts that the Prosecution has not shown that the alleged acts charged against Milan Lukić in the Indictment were committed other than for purely personal motives unrelated to the conflict. Further, the Defense submits that, as to Article 5, a temporal or geographic link does not exist as there was no state of armed conflict during the relevant indictment period.

B. THE PROSECUTION HAS FAILED TO SHOW THESE CRIMES WERE COMMITTED IN PART OF A WIDESPREAD AND SYSTEMATIC ARMED CONFLICT

67. The Prosecution has failed to show that there was a widespread or systematic attack to which these allegations are related. As discussed above, there are many factors that can be considered to determine the widespread and systematic nature of crimes alleged including the consequences of the attack upon the targeted population, the number of victims, the nature of the acts, the possible participation of officials or authorities, or any identifiable patterns of crimes.⁷²

68. In the present case, there is no identifiable pattern of crimes but a series of allegations that are unrelated in nature. There is no identifiable participation of any ‘officials or authorities’, in fact, quite the opposite in that the Prosecution has rejected notions that

⁷⁰ *Kunarac* AJ, para.55, 58-60.

⁷¹ *Id.* at para.83.

⁷² *Id.*,para.95.

Milan Lukić should have been involved with the legitimate security forces during the relevant time period.

69. While there are certainly a good deal of victims in the present Indictment, the limited geographical scope and unrelated nature of the crimes suggests nothing of a widespread and systematic nature, but rather a series of unrelated events.

70. Ms. Ewa Tabeau testified for the Prosecution to demonstrate the general effect of population movements during the 1990s in Bosnia and the Višegrad region; however, her testimony shows nothing in this case of direct commission against Mr. Milan Lukić in mid-1992 to demonstrate that these specific allegations were part of a widespread and systematic attack. Mr. Amor Masović's testimony likewise fails, but for the reasons that he is an untrained statistician who cannot attest to legitimate studies of population movements and certainly cannot provide reliable information as he is merely relying what is told to him, often from third parties.⁷³ He is a biased gatherer of information – considering all police and military of Western Bosnia as ‘enemies’⁷⁴ – and he himself admits that his work is “not research” or “scientific methodology” and that he is “not an expert” or “researcher”.⁷⁵

71. The Defense would be happy to analyze further information regarding a widespread and systematic nature surrounding these crimes, but the naked truth is that there simply was no evidence in this case that shows how the specifically Indicted crimes against Milan Lukić form a widespread and systematic attack; the lack of that evidence shows that they are a series of lawless incidents in a small region with absolutely no system or overarching plan in place.

72. As further explanation as to the lack of the chapeau elements, the Defense reincorporates by reference all arguments made in the 98*bis* submissions of 12 November 2008. In doing so, the Defense, again, submits that the Prosecution has presented no evidence to prove beyond a reasonable doubt that these incidents form anything of a widespread and systematic nature rising to a level that makes them crimes against humanity.

⁷³ T.3175/3-25.

⁷⁴ T.3179/3-24.

⁷⁵ T.3182/12-21.

C. **THE PROSECUTION HAS NOT ESTABLISHED THAT MILAN LUKIĆ WAS A MEMBER OF, LET ALONE THE COMMANDER OF, A PARAMILITARY GROUP KNOWN AS THE “WHITE EAGLES” OR BY ANY OTHER NAME.**

73. The Prosecution has failed to show that Milan Lukić was a part of any paramilitary organization. To the contrary, the Prosecutor has resisted any evidence brought forth by the Defense to outline Milan Lukić’s service as a reservist within the legitimate security forces of Višegrad and the Repubulika Srpska.

74. Milan Lukić was a reserve police officer, a point totally ignored by the Prosecution in their case in total. Their case hinges on the allegation that he was a rogue group leader of a notorious and specific paramilitary called the White Eagles. However, nothing was lead in the Prosecution’s case-in-chief that would even indicate, less prove beyond a reasonable doubt, that Milan Lukić was even a member of any such paramilitary, and certainly not a leader. Rather, the Prosecution witnesses have said that Colonel Jovanović was in control of the White Eagles.⁷⁶ Some said that the White Eagles came from Serbia.⁷⁷ What is known is that no one concretely established a relationship between Milan Lukić and this well-known paramilitary, the “White Eagles.”

75. By no stretch of the imagination, then, can the evidence in this case put Milan Lukić as a paramilitary leader in the summer of 1992.

D. **THE PROSECUTION HAS FAILED TO MEET ITS BURDEN OF IDENTIFYING MILAN LUKIĆ AS THE PERPETRATOR OF ANY CRIMES IN THE SECOND AMENDED INDICTMENT**

76. In the instant case, identification of alleged perpetrators is of paramount importance. This is a direct commission case where the allegations against the Accused stipulate that he directly committed the crimes alleged in the Second Amended Indictment.

77. As such, it is respectfully submitted that the Prosecution must establish in its case beyond any reasonable doubt that Milan Lukić, the very same individual that is the Accused in Court, committed any of the crimes alleged.

⁷⁶ T.477/15-17; T.971/19-21; T.1338/9-11; T.1265/19-1266/19.

⁷⁷ T.4420/12-22.

78. Respectfully, despite the utilization of the much maligned and inherently unreliable “in-court” identification process, the Prosecution has not proven that Milan Lukić was involved in, or a perpetrator of the crimes alleged. Indeed, it appears more likely that in this situation, rather than working from reliable descriptions by victims, the Prosecution indicted Milan Lukić based on the rumors and propaganda of newspapers and THEN sought statements to back up the allegations. The *DUGA* article, and the Prosecution’s insistence upon admission of that article, is a prime example of the central role that media propaganda has played in driving the Prosecution.

79. In this vein, it should be recalled that the physical identification evidence proffered by the Prosecution through its witnesses has been diverse, to say the least. The only thing that is consistent is the Prosecution’s effort to distract from constant misidentifications by their witnesses by repackaging compromised witness testimony and asking the Trial Chamber to turn a blind eye to explicit and flagrant failures to name or properly identify Milan Lukić in the earliest witness statements.

80. It ought to be recalled at this stage that a number of Prosecution witnesses, in their initial statements, did not mention Milan Lukić’s name in connection with events complained of, and only inserted his name in subsequent statements or testimony.⁷⁸

81. One has to seriously question the thoroughness and veracity of the Prosecution to understand how and why it can be that in a case of such serious magnitude, the OTP failed to present an identification photo board to witnesses who named Milan Lukić.⁷⁹ Witnesses were shown photo boards of Mitar Vasiljević, but with limited exception, the Prosecution failed to do the same as to Milan Lukić. Or, as is a possibility, once the Prosecution did use photo boards, and realized that the witnesses could not identify the Milan Lukić that is an Accused here, evidence of the misidentification was hidden and destroyed by the Prosecution.

82. In this regard it is noteworthy to mention the OTP witnesses who in 1998 were presented grainy surveillance photographs⁸⁰ of a resemblance to the late Novica Lukić (killed following the brutal killing/assassination of Novica Lukić in the course of a “botched” arrest

⁷⁸ e.g. VG-11, VG-42, Huso Kurspahic.

⁷⁹ T.811/5-9; T.1583/2-11; T.3086/1-9.

⁸⁰ 1D75.

of Milan Lukić in 2004). Of these witnesses, VG-25 mistakenly identified the photographs of Novica Lukić to be Milan Lukić, against whom they had alleged criminal conduct.⁸¹ VG-14 stated that although uncertain, the image could be of Milan Lukić.⁸²

83. The intent and purpose behind the Prosecution's use of these grainy photographs of surveillance is open to several interpretations, all of them seeming to suggest knowledge on the part of the Prosecution that the indicted Milan Lukić did not fit the description of its own witnesses.

84. Indeed, the Indictment issued by Interpol and upon which Milan Lukić was eventually arrested, identifies him as a blue-eyed individual, with tattoos and a mole.⁸³

85. Multiple photographs of Milan Lukić have been introduced into evidence by the Defense, which demonstrate that the Accused does not in fact, resemble the grainy surveillance photos used by the Prosecution or the description in the Interpol Warrant.⁸⁴

86. Indeed, even photographs presented by the Prosecution alleging to show Milan Lukić during the time period relevant to the Indictment⁸⁵ fail to show the gentleman described by Prosecution witnesses, and in particular the Interpol Warrant or the grainy surveillance photographs used with witnesses.

i. The flawed in-Court Identification Process cannot be relied upon to have established the identity of perpetrators as the Accused Milan Lukić

87. As a preliminary matter, the Defense of Milan Lukić, upon request of the Court, on 3 November 2008, submitted a rather lengthy submission objecting to in-court identification. To the knowledge of the Defense, this has never been ruled or otherwise acted upon by the Trial Chamber. We take the opportunity to highlight the pertinent points from that submission.

⁸¹ T3117/23-25.

⁸² T.3118/1-2.

⁸³ T.3013/14-15.

⁸⁴ 1D72,1D45,1D46.

⁸⁵ P229,P258,P230,P231,P232,P249.

88. While not often used at the ICTY, in-dock identification has been employed in cases of direct commission like the present matter. Typically, however, the Trial Chamber has treated identification of the Accused by a witness, while the Accused is seated in the “dock”, as dock identification. In instances where dock identification has been allowed, it has been awarded virtually no weight. In fact, in the most recent jurisprudence of the ICTY, the Appeals Chamber found error in giving *any* weight to such in-court identification.

89. In *Prosecutor vs. Limaj*, the Trial Chamber allowed in-court identification but noted, “the Chamber is very conscious that an identification of an Accused in a courtroom may well have been unduly and unconsciously influenced by the physical placement of the Accused and the other factors which make an Accused a focus of attention in a courtroom.”⁸⁶

90. Despite the caveat and caution noticed by the Trial Chamber, the Limaj Appeals Chamber found that “**no probative weight** should be attached to in-court identification. The Trial Chamber attached some weight to the in-court identifications and to the extent it did it was in error.”⁸⁷ In doing so, the Appeals Chamber unequivocally stated the following:

The Appeals Chamber agrees with both parties that no probative weight should be attached to in-court identifications. *As considered by the Kunarac Trial Chamber, in-court identifications are inherently unreliable ‘because all of the circumstances of a trial necessarily lead such a witness to identify the person on trial.’ This has been affirmed in both the Kunarac and Kamuhanda Appeal Judgments*⁸⁸.

91. It should be noted that while completely dismissing in-court identifications, the Limaj Appeal Chamber did not disclose the antithesis, noting “[t]he failure to identify an accused in court, however, can be a reason for declining to rely on the evidence of an identifying witness.”⁸⁹ In this regard it should be noted that Zehra Turjaćanin failed to identify either Accused in the Courtroom.⁹⁰

92. This latest jurisprudence comes years after objections from the very beginning of this Tribunal to the use of in-court dock identification. In the very first Judgment of *Prosecutor vs. Tadić*, the Chamber noted the objection to the practice in stating:

⁸⁶ *Prosecutor vs. Limaj* IT-03-66-T (Trial Judgment) 30 Nov. 2005, para.18.

⁸⁷ *Limaj*, IT-03-66-T (Appeals Judgment) 27 Sept. 2007, para.27-28.

⁸⁸ *Id.* (emphasis added)

⁸⁹ *Id.*

⁹⁰ T.2342/1-10.

The Defense challenged the identifications made by all these witnesses. The Trial Chamber places little weight upon mere dock identification; the circumstances attendant upon such identification, with the accused seated between two guards in the courtroom, require the Trial Chamber to assess the credibility of each witness independently of that identification.⁹¹

93. In *Kupreskić*, Judge May further captured the concerns regarding in-court identification by observing “[t]he danger of the dock identification is that the witness will look at the dock, see the man in the dock, and then identify him as the person he’s seen before.”⁹² In *Kupreskić*, the in-dock identification was allowed by one witness with the weight to be determined by the Trial Chamber, in part, because the danger was mitigated by the presence of 6 accused.⁹³

94. In this case, the two Accused are charged in a high-profile case, with the bulk of witnesses coming from the same small town where the crimes are alleged. The danger here is that the witnesses can surmise that the Accused are the only two people seated between the guards and the only two people not appearing in robes on the Defense side of the room. To illustrate this separation, one witness, when asked if he knew anyone in the Courtroom asked: “You mean in the service of the Tribunal or among the accused?”⁹⁴

95. To make a distinction between the two Accused is fairly easy when witnesses have knowledge of one, they can necessarily deduce the other; or, if the witnesses have any information about either of the two in description - especially age or identifying features – it allows for identification of both. For instance, simply knowing Sredoje Lukić is older identifies him by process of elimination, making it unnecessary to have ever seen in person or by way of photograph either of the two.

96. While it is not known how many of the OTP witnesses had seen or heard about descriptions of the Accused in this case before testifying in this matter, the Defense would direct the Trial Chamber to 1D72, an exhibit sampling several photos readily available on the internet at the present time; including the picture located at the ICTY’s own website in the

⁹¹ *Tadić* TJ, para.546.

⁹² *Kupreskić*, TJ, para.16-19.

⁹³ *Id.*

⁹⁴ T.1969/12-16.

case information sheet. Right now, and for some time prior to the trial's start, these photos have been readily available and come up whenever one searches for "Milan Lukić" in Google or similar web search engines.

97. In addition to information available on the internet, SENSE News Agency broadcasts to Bosnia-Herzegovina once a week with video footage of the trials at the ICTY – including this case, not only showing footage of Milan Lukić in court and identified, but also showing photographs of Milan Lukić that are not part of the proceedings. At least one witness, VG-133⁹⁵ has admitted to watching this coverage.

98. That potential taint aside, given the prejudice of in-court identification alone, many jurisdictions have only now allowed in-dock identification when there has been some type of prior identification of the Accused, whether through a photo board or identification parade. In this case, it is notable to again emphasize the testimony of Investigator Ib Jul Hansen of the OTP, who said that such procedures were not performed with the witnesses in this case.⁹⁶

99. The Defense hereby adopts and incorporates as if set forth fully herein the remaining paragraphs of its 3 November 2008 filing on in-court identification. Under such a set of circumstances, there can be no weight attributed to the Prosecution witness identifications of the Accused in the courtroom. This is particularly true where witnesses who have given witness statements citing a description contrary to Mr. Lukić's actual description, attempt to identify him in Court, even though his appearance contradicts their previous, sworn statement's description.⁹⁷

ii. Prosecution witnesses have given varied, misidentification evidence that does not support the Prosecution's burden of proof as to identification of the Accused Milan Lukić

100. Added to the problematic in-court identification, and the Prosecution's inexplicable failure to perform photo board or identification parade style checks on their witnesses, many witnesses that have come to testify have offered contradictory and varied descriptions of the man that they claim is Milan Lukić, the alleged perpetrator of crimes.

⁹⁵ T.3029/6-16.

⁹⁶ T.3088/6-7; T.3137/3-9.

⁹⁷ VG-63, VG-35.

101. Indeed, to attempt to cure the deficient descriptions offered by the witnesses, some Prosecution evidence has been led unequivocally claiming that there is only one man named Milan Lukić hailing from Višegrad.⁹⁸

102. Such stubborn myopic testimony on the part of Prosecution witnesses calls into question their veracity and credibility, especially when one takes into account that evidence has been led to show the existence of multiple persons with the same or similar names (even in Višegrad) and the fact that Prosecution descriptions vary so dramatically and are clearly referring to another man, a man different from the Accused.

iii. Existence of multiple persons with the same name as Milan Lukić has been proven

103. There has been a very significant oversight on the part of the Prosecution, or at least on the part of the victims' associations that have concocted the testimony of Prosecution witnesses. Another Milan Lukić, older than the Accused, indeed was born in Rujiste (same village as the Accused), and was alive and in Višegrad during 1992.

104. Several Defense witnesses testified in some detail about this other Milan Lukić.⁹⁹ The Defense has also presented unrebutted and uncontroverted evidence that this Milan Lukić was killed and buried in Višegrad.¹⁰⁰

105. In a town the size of Višegrad, for Prosecution witnesses to omit or not know this fact is incredible. In fact, it calls into question their veracity and credibility, particularly when describing Milan Lukić to be older than the Accused.

106. The Defense likewise has presented unrebutted and unrefuted evidence that a large number of other persons with the name Milan Lukić exist and are registered as residing in Bosnia-Herzegovina.¹⁰¹

⁹⁸ T.1717/14-21.

⁹⁹ T.4486/7-13; 1D104.

¹⁰⁰ T.4487/3-18; 1D104.

¹⁰¹ This is supported by an RFA from Bosnia (1D22-1003) that was moved for admission in Milan Lukić's Fourth Bar Table Motion of 24 April 2009 and was resubmitted with a full translation by the deadline on Friday, 8 May 2009; this document is still pending Decision on admission.

107. Neither the Prosecution nor its witnesses, either in Chief or in Rebuttal have had an answer for this very straightforward point. The Prosecution has done nothing to dispel the reasonable inference that the Milan Lukić being described by victims of alleged crimes, particularly when the description does not fit the Accused, is a different person entirely, or that witnesses claiming there is no other such named individual are not being truthful.

iv. Identification by Prosecution witnesses of persons with similar names as Milan Lukić creates reasonable doubt

108. There has been evidence led at trial that persons with the name of Lakić, Dragan Lukić, Lalco, or other names existed in Višegrad and were linked to some of the alleged crimes now being attributed to Milan Lukić.¹⁰²

109. One witness discussed the prevalence of individuals with the surname ‘Lucic’ and noted that, compared with ‘Lukić’, “[s]omebody might get these two mixed up....”¹⁰³

110. What’s more, there was at least one ‘Milos Lukić’ identified in the Prosecution’s case who ‘was of middle height and had blond hair’.¹⁰⁴ More amazing is Zehra Turjaćanin herself identifies her talking to a colleague of hers from work, named Milan Lucic, a local Serb, and a good man as she describes him, crying and wondering why she had not left.¹⁰⁵

111. This evidence is unrebutted and unrefuted by the Prosecution, and thus the existence of such persons with similar names creates reasonable doubt, indeed a probability that the “Milan Lukić” being described by witnesses of the Prosecution is not the Accused, which, again, calls into question the credibility of these witnesses.

v. Misidentification of physical characteristics

a. Misidentification of Milan Lukić by Prosecution witnesses who said he has blond hair creates reasonable doubt

¹⁰² T.904/19-23;T1360/16-17;T1303/10-17.

¹⁰³ T.1978/16-20.

¹⁰⁴ P142, p.9.

¹⁰⁵ T.2306ln.13-2307-15.

112. It is quite damning to the Prosecution's theory and case that witnesses it has presented in these proceedings gave sworn testimony identifying Milan Lukić as having been blond in 1992. Naturally, this clashes with other OTP witnesses who stated a different hair color. It likewise clashes with photographs of Milan Lukić, and his appearance in open court. However, that did not stop witnesses from being asked to identify the blond Milan Lukić by the Prosecution and obediently fingering the Accused.¹⁰⁶ Respectfully, such a botched identification speaks greatly about the coaching and instruction of OTP witnesses enabling them to correctly finger the Accused in Court.

113. Prosecution witness VG-35 testified as to a blond Milan Lukić being the one that committed crimes she testified about.¹⁰⁷

114. CW2, albeit a Chamber Witness, originally was disclosed to the Defense by the Prosecution and likewise spoke of a blond Milan Lukić in her statement, something she verified in oral testimony without any hesitation.¹⁰⁸

115. On the other hand, we have the testimony of MLD10 that Milan Lukić never had blond hair in the time she knew him.¹⁰⁹ Likewise the witness MLD18 testified that Milan Lukić, the Accused, always had black hair.¹¹⁰

116. The references to a blond Milan Lukić call into question whether the Prosecution has met the burden of proof as to identification of the Accused.

b. Misidentification of Milan Lukić by Prosecution Witnesses who said he has tattoos creates reasonable doubt

117. As stated previously, the Interpol warrant for Milan Lukić stated he had tattoos.¹¹¹ When the Defense asked the appropriate Interpol authorities in Bosnia for the basis for this

¹⁰⁶ T.1868/4-7; T.1868/15-23; T.1969/3-6.

¹⁰⁷ T.1714/8-1719/18; 1D44.

¹⁰⁸ T.7080/8-10.

¹⁰⁹ T.3951/7-9.

¹¹⁰ T.4423/9-11.

¹¹¹ 1D237.

claim, it was reported (after much obfuscation, and finger pointing in circles and chasing after ghosts amongst various organs of the State) that the file can no longer be located.¹¹²

118. VG-63 testified for the Prosecution, and in her statement very clearly and unequivocally identified and described the double eagle tattoos on the arm of the Accused.¹¹³

119. Now, while there has been evidence of other persons existing in Višegrad with blond hair and tattoos¹¹⁴; both the Argentinean police and Cliff Jenkins specifically examined Milan Lukić for tattoos and determined that the Accused did not have any evidence of present tattoos, or of ever having had any such tattoos removed.¹¹⁵

120. Misidentification of such a critical identifying feature by Prosecution witnesses creates serious reasonable doubt as to the identity of the perpetrator being this Milan Lukić that is before the Tribunal.

c. Misidentification of Milan Lukić by Prosecution witnesses who said he had a birthmark/mole creates reasonable doubt

121. The Interpol warrant describes the suspected culprit, Milan Lukić, as having a prominent birth mark on his face.

122. Several Prosecution witnesses have testified, either in their statements or orally, about some birthmark or mole on the face of Milan Lukić that was distinctive enough for it to make an impression upon them so as to identify the individual.¹¹⁶ The fact that certain of these witnesses have tried to fabricate¹¹⁷ confirmation of such a distinguishing feature on photographic depictions of Mr. Lukić where there clearly are no such features, goes a long way toward establishing the lack of credibility to be placed upon these Prosecution witnesses.

¹¹² See BiH response to Defense 54 *bis* Application.

¹¹³ T.1894/2-1895/7; 1D49.

¹¹⁴ T.1112/25-113/13.

¹¹⁵ T.6518/8-6519/11.

¹¹⁶ VG-94 (T.7040/5-23, 1D227); VG-97 (T.614/17-22; 616/13-16); VG-14 (T. 388/21-389/4; 389/24-390/25; 300/612); VG-131 (T.3419/2-6); VG-35 (T.1713/10-1714/7).

¹¹⁷ 1D76: T.2764/1-3.

123. Photographs of the Accused, as well as his current appearance, clearly denounce and refute the existence of any such mole or birthmarks on his face as identified by witnesses.

124. The fact that the Prosecution showed grainy surveillance photographs¹¹⁸ of Milan's late brother, Novica (who did have a noticeable mole on his face), clearly demonstrates the extent to which the existence of this distinguishing facial feature was critical to the witness' descriptions of the perpetrator.

125. Misidentification of such a critical identifying feature by Prosecution Witnesses creates serious reasonable doubt as to the identity of the perpetrator being this Milan Lukić that is before the Tribunal.

d. Misidentification of Milan Lukić by Prosecution witnesses who said he was of a different age than his true age in 1992 creates reasonable doubt

126. Perhaps not as easy to spot as an error in identification in the record, but nonetheless just as important, is the error in the age attributed to Milan Lukić by alleged eyewitnesses of crimes purported to be committed by him.

127. The record is clear that Milan Lukić was born on 6 September 1967.¹¹⁹

128. VG-94 erroneously identified Milan Lukić as being 35 years of age in 1992 when she alleged to have seen him.¹²⁰

129. VG-17 likewise erroneously described Milan Lukić as being between the age of 30 and 35 years of age in 1992.¹²¹

130. VG-24, although herself born in 1958, testified erroneously as to knowing and encountering Milan Lukić as a little boy when she too was a similar age.¹²²

¹¹⁸ 1D75.

¹¹⁹ T.1698/2-3; T.1378/6-11.

¹²⁰ T.7041/23-7042/15.

¹²¹ T.2732/24-2733/7.

¹²² T.3206/25-3208/11; 3245/18-25.

131. Likewise, VG-42 testified erroneously as to having known Milan Lukić during her childhood, despite the age difference that is apparent in their two birthdates.¹²³

132. Several others based their knowledge of Milan Lukić based on brothers or siblings who went to school with the Accused, but whose birthdates belie that in fact they could NOT have attended school together.¹²⁴

133. Most notably, Zehra Turjaćanin testified that she knew Milan Lukić because she would smoke cigarettes with her brother and Milan Lukić in school.¹²⁵ However, uncontroverted evidence has been presented to this Trial Chamber revealing this identification to be nothing more than a blatant fabrication by the witness, as she did not attend school with Milan Lukić¹²⁶ and her own brother refuted her claim to knowing Milan Lukić through him.¹²⁷ Again, notably, Ms. Turjaćanin was unable to identify Milan Lukić in the courtroom.

134. Misidentification of such a critical identifying feature by Prosecution witnesses cannot be cured and creates serious reasonable doubt as to the identity of the perpetrator being this Milan Lukić that is before the Tribunal.

e. Misidentification of Milan Lukić by Prosecution witnesses who said he was seen with Mitar Vasiljević at Pionirska and/or Bikavac creates Reasonable Doubt

135. Mitar Vasiljević, was previously tried before this Tribunal in 2001/02.

136. During the course of that trial, the factual evidence established that Mitar Vasiljević injured himself and suffered a serious compound fracture of his leg on 14 June 1992, which required his transportation to and hospitalization in Uzice.¹²⁸

¹²³ T.2819/12-2820/22.

¹²⁴ e.g. 1D70.

¹²⁵ T.2292/23-25;2293/1-7.

¹²⁶ 1D105, 1D106; 1D82.

¹²⁷ 1D84;1D86.

¹²⁸ 1D38.1, 1D38.2, 1D38.3, 1D38.4, 1D38.5, 1D38.6, 1D38.7, 1D38.8; *see also*, Decision on Sredoje Lukić Amended Motion for Judicial Notice, 12.11.2008.

137. Medical evidence was led at that trial as to his lengthy stay in the hospital and recuperation.¹²⁹

138. The Prosecution dismissed and did not pursue the Bikavac charges against Mitar Vasiljević, due to the factual impossibility of his being at Bikavac on a date following his leg break.

139. A factual finding was made by the Trial Chamber as to Mitar Vasiljević's leg break precluding the possibility of him being at Pionirska Street at the time of the alleged incident on 14 June 1992.¹³⁰

140. Thus, given the foregoing, witnesses who have identified Milan Lukić alongside Mitar Vasiljević at the Pionirska site on 14 June 1992, AFTER the time Vasiljević's leg broke, are either mistaken or lying, and as such, their identification of Milan Lukić being present is also called into doubt.

141. In this regard, it should be recalled that a plethora of evidence was led of Milan Lukić establishing an alibi for him, such that he could not have been at the Pionirska Street location on the night of 14 June 1992.¹³¹

142. Irrespective of the foregoing well-established facts pertaining to Mitar Vasiljević's alibi of broken leg, and Milan Lukić's alibi of being engaged at Kopito during the time of the Pionirska Fire, multiple Prosecution witnesses erroneously place Mitar and Milan at Pionirska Street, on 14 June 1992 during the evening hours.¹³²

143. Misidentification of such a critical fact by Prosecution witnesses creates serious reasonable doubt as to the identity of the perpetrator being this Milan Lukić that is before the Tribunal, and raises serious questions about the veracity and credibility of these Prosecution witnesses.

¹²⁹ *Id.*

¹³⁰ *See*, Decision on Sredoje Lukić Amended Motion for Judicial Notice, 12.11.2008.

¹³¹ T.4561/16-21; T.4103/3-14; 4104/22-25; 4105/1-25; 4106/1-5; 4107/3-7; 4108/6-25; 4109/1-25; 4110/1-19; 4111/5-2; 4542/23-25; 4543/1-25; 4544/1-25; 4546/1-14; 4547/19-25; 4548/1-3; 4549/2-25; 4550/1-25; 4551/1-19; 4307/16-25; 4308/1-10; 5054/4-13; 5118/12-19.

¹³² VG-78(T.1385/4-22); VG-100(T.1430-/11-1431/6; 1446/17-1467/30); VG-18(T.1349/13-1352/21; 1D34).

f. Witnesses have mistakenly identified Milan Lukić solely by virtue of relying upon their eye witnessing someone driving a red Passat, which cannot and does not discharge the Prosecution's burden

144. It is simply incredible how much the Prosecution's case on identification of Milan Lukić as a perpetrator depends upon the uncharged, and thus improperly brought, evidence relating to Behija Zukić's red Volkswagen Passat, which is alleged to have been driven solely by Milan Lukić, after he is supposed to have killed her and taken the auto.

145. Arguably a vast majority, if not most, of the Prosecution witnesses based their identification, of Milan Lukić, described in detail or not, entirely or in part on his possession of or operation of a red Passat.¹³³

146. However, there was evidence led that the Passat, along with other cars mobilized or seized by the Police from residents, was part of the carpool, and used by police officials in the course of their duties.¹³⁴

147. Witnesses testified as to other persons driving the red Passat, including Commander of the Police, Dragan Tomić's bodyguard detail, of which Milan Lukić was a member.¹³⁵ The evidence includes a photograph from July 1992 displaying another Tomic bodyguard, Vidoje Andrić, sitting atop a red vehicle, alongside Milan Lukić, both dressed in the same Police uniforms.¹³⁶

148. One rebuttal witness, VG-148, attempted to go so far as to identify that all the "stories" relating to the red car were attributed to Milan Lukić, and he excluded Vidoje Andrić, as having any role or ever being seen along with the car.¹³⁷ He naturally and logically was stumped by the aforementioned photograph, and had to retract his level of certainty.

¹³³ See VG-64(T.2887/7-10; 2915/21-2916/10);VG-133(T.2953/1-24);VG-89(T.1735/5-1736/5);VG-84(T.1213/13-1214/7;1226/19-1227/12);VG-79(T.439/3-25;440/16-25);VG-104(T.821/18-822/6);VG-42(T.2799/16-19);VG-141(T.6747/13-25;6771/21-6772/15);VG-148(T.6850/25-6851/6);VG-97(T.613/20-614/9);VG-115(T.667/24-669/8);VG-97(T.594/13-17;599/2-11);VG-17(T.2720/21-2721/10;2741/6-12);VG-133(T.3030/16-21);VG-24(T.3219/1-18);VG-35(T.1676/25-1677/13);VG-58(T.1592/16-1593/2);VG-119(T.2392/21-2393/6; 2440/12-22).

¹³⁴T.4947/14-20.

¹³⁵VG-148(T.6849/18-22).

¹³⁶1D126.

¹³⁷ *Id.*

149. The misapprehension of the people as to the red Passat speaks in volumes as to how things can be exaggerated and drawn out of proportion and influence a number of people to incorrectly identify things based upon mistaken perceptions and assumptions.

150. Clearly, if other persons were able to and did drive a red Passat that was mobilized by the Police, the image of that Passat cannot be used to link Milan Lukić, beyond reasonable doubt, to any sighting of the Passat alone.

g. Witnesses have based their knowledge and identification of Milan Lukić upon representations of out-of-court declarants, who allegedly knew him

151. A problematic number of Prosecution witnesses either did not know Milan Lukić prior to the war at all, or did not recognize him due to his long absence from Višegrad, and thus relied entirely on the descriptions or identifications from other persons, typically third parties that did not testify, as the basis for the identification or misidentification of an unknown man, to be Milan Lukić.¹³⁸

152. There is a reasonable inference that these third parties are mistaken, and thus OTP witnesses relying on the identification of these third parties are likewise mistaken, particularly when the descriptions do not appear to comport with the Accused's appearance and details.

153. Therefore, the identifications by third parties upon which Prosecution witnesses who did not personally know Milan Lukić cannot be relied upon and cannot be a basis for discharging the burden to prove the identity of perpetrators.

V. FAILURE OF THE PROSECUTION TO PROVE THE COUNTS AS CHARGED

A. THE PROSECUTION HAS FAILED TO ESTABLISH THE LIABILITY OF MILAN LUKIĆ FOR THE ALLEGATION OF COUNTS 1 RELATING TO PERSECUTIONS

¹³⁸ VG-38(T.952/17-22;967/12-18);VG-13(T.1101/12-1105/21);VG-84(T.1245/12-1246/6);VG-18(T.1303/8-25);VG-78(T.1382/16-21);VG-101(T.1475/10-22;1475/24-1476/14);VG-17(T.2724/1-9);VG-24(T.3206/25-3208/11;3254/15-3255/14;3255/22-3256/8);VG-94(T.7033/8-7040/4);VG-141(T.6768/4-8);VG-136(T.6814/1-6815/1).

154. In the present Indictment, the Prosecutor alleges the crime of Persecutions as an alternative charging instrument for the enumerated counts in the Indictment.

155. In order to convict Milan Lukić of Persecutions, there must be evidence that the act, as shown above, must actually be discriminatory and the Prosecutor must have shown that it was carried out deliberately with the intention to discriminate on one of the listed grounds, specifically race, religion or politics.

156. To be sure, the Defense refutes that the *actus reus* has been demonstrated for any of the herein enumerated counts and, as such, Milan Lukić should be acquitted on all charges for the reasons set for in this brief. Not the least of this lack of *actus reus* is the absence of forensic evidence or adequate proof of death.

157. However, regarding the *mens rea* element of persecutions, the Defense led evidence to demonstrate that contrary to the necessary persecutory intent or mental state, Milan Lukić many had Muslim friends.¹³⁹ There has been evidence before the Court that he never caused trouble in high school with Muslims, never fought them, never had this discourse.¹⁴⁰ There has been evidence before the Court that Milan Lukić “did not distinguish between people in terms of nationality or ethnicity.”¹⁴¹ It was said that Milan Lukić was very thoughtful and kind towards all people regardless of their nationality.¹⁴²

158. MLD10, a Muslim woman, testified to Milan Lukić’s assistance to locate her family in Višegrad and deliver a care package to them.¹⁴³ She was able to confirm with her father after the war that Milan Lukić had honored his promise to her and how Milan Lukić had made it possible for her family to move to a safe place.¹⁴⁴

159. Dr. George Hough testified that in his analysis, he found that Milan Lukić was able to relate to people of various nationalities, stating:

¹³⁹ T.350/8-9.

¹⁴⁰ T.362/13-19.

¹⁴¹ T.3951/21-22; see also T.3845/16-17: “I never saw any traces of intolerance in him towards any people of other ethnic backgrounds, religion, or race.”

¹⁴² T.3951/13-14.

¹⁴³ T.3954/22-3955/1;3957/12-3958/1.

¹⁴⁴ T.3958/15-3959/1;3965/21-3966/1.

“I don't find any evidence that he felt any special strong tension one way or the other regarding the different cultures and groups. He felt quite comfortable with all of them, didn't harbour any particular prejudice or certain preconceived notions or over-valued ideas about other people who were different than himself.”¹⁴⁵

160. As there is no evidence of the underlying actus reus for the crimes of persecutions as laid out in the specific sections below, and no specific intent of Milan Lukić to discriminate on political, racial, or religious grounds, the charges of persecutions must fail to be proven beyond a reasonable doubt.

B. THE PROSECUTION HAS FAILED TO ESTABLISH THE LIABILITY OF MILAN LUKIĆ FOR THE ALLEGATIONS OF COUNTS 2-5 RELATING TO THE DRINA RIVER.

161. The Indictment, at Counts 2–5, alleges responsibility against Milan Lukić for the killings of five named individuals on the Drina River, 7 June 1992.

i. VG-14

162. The Office of the Prosecutor began its case-in-chief with the Drina River witness VG-14. It is the position of the Defense that VG-14 was an interested, biased, and/or mistaken witness regarding the incident early June 1992.

163. Allegedly, for the 10 days preceding 7 June 1992, VG-14 was in hiding in the area around his home near Bikavac.¹⁴⁶ By hearsay information, VG-14 learned that persons generally known as the White Eagles had been searching the Bikavac neighborhood.¹⁴⁷ According to VG-14, he was in his home on 7 June 1992 when soldiers — including a man allegedly named Milan Lukić, described as having a black face, a blue beret, a blue uniform, and a kokarde with a double-headed eagle on the beret and the same in insignia on his chest — started searching homes in the neighborhood.¹⁴⁸

¹⁴⁵ T.6294/9-21; *see generally* 1D203.

¹⁴⁶ T.295/1-19.

¹⁴⁷ T. 294/22–23; T.295/17-20.

¹⁴⁸ T.2961-4.

164. According to VG-14, he knew Milan Lukić from school, as he himself was born in 1967, and claimed to have had attended secondary school with Milan Lukić, but not in the same class.¹⁴⁹ VG-14 was uncertain in his testimony regarding Mr. Lukić's time in school, and asserted that he "heard" that Milan Lukić left school in the second year and went to Obrenovac to enter the police.¹⁵⁰ VG-14 also claimed to know Milan by name when he was a boy.¹⁵¹ Furthermore, VG-14 describes on direct examination, that Milan Lukić was a quiet boy, and that he did not have any kind of attitude in terms of other ethnic groups, and that he was a nice boy.¹⁵²

165. VG-14 described Milan Lukić as wearing a blue camouflage uniform with a police insignia on his arm, with a black face, and with white sneakers on his feet. He also specifically made reference to a mole on one side of his face above the lip, no socks, and a purported Band-Aid on the inside of his arm where one would have blood taken and a sniper rifle with a silencer.¹⁵³ Yet, despite the long purported association, the person that VG-14 claims to be Milan Lukić acted as if he didn't know him.¹⁵⁴ While being questioned by Judge Robinson, VG-14 reiterated that the person he believed to be Milan Lukić was so because he had a distinct mole on his face, and he knew him from before.¹⁵⁵ Yet, VG-14 never socialized or had conversations with Milan Lukić.¹⁵⁶ VG-14 intimated on direct examination that he had not seen the person he believed to be Milan Lukić from the time during secondary school in which he believed Milan Lukić left and 7 June 1992.¹⁵⁷ Later, VG-14 clarified that he had not seen the person he believed to be Milan Lukić between 1984 and 1992.¹⁵⁸ Furthermore, the witness conceded that he had seen photographs and wanted posters of Milan Lukić all over the place, in public buildings, and in his place of employment over the last eleven years.¹⁵⁹

166. In fact, VG-14 focused very much on the red VW Passat that was owned by Behija Zukic, firmly believing that Milan Lukić had killed Mrs. Zukić and taken her Passat.

¹⁴⁹ T.296/13-19,297/1-3.

¹⁵⁰ T.297/15-24.

¹⁵¹ T.298/1-3.

¹⁵² T.298/15-16.

¹⁵³ T.299/6-11; T.299/13-25.

¹⁵⁴ T.300/5-10.

¹⁵⁵ T.301/1-17.

¹⁵⁶ T.302/19-25.

¹⁵⁷ T.303/18-25.

¹⁵⁸ T.339/1-10.

¹⁵⁹ T.340/1-25, Tr.343/23.

However, VG-14 confirmed that his knowledge of the Behija Zukić situation was gathered solely from hearsay.¹⁶⁰ VG-14 was further inflamed and biased, having heard other stories unconfirmed through hearsay regarding Milan Lukić.¹⁶¹ Regardless, VG-14 never laid a sufficient foundation to give any real evidentiary weight to his hearsay knowledge. Clearly the hearsay available to him can be given no more weight than rumor without specific reference as to how, when, where, and under what circumstances he gained such hearsay information.

167. VG-14 explained that he was originally placed in the Passat with Milan Lukić allegedly driving, a co-soldier in the passenger seat, with himself and two others in the backseat.¹⁶² VG-14 clarified that he was one of three people originally sitting in the back of the VW Passat.¹⁶³ The number of passengers becomes important because a total of seven men and allegedly four soldiers are asked to fit into two vehicles, one being unequivocally a very small, grey or green Yugo.¹⁶⁴ VG-14's and VG-32's testimony linking the allegations of 7 June 1992 to a red Passat are called into question and dispute because Prosecution witness, VG-79, an independent bystander witness, identified the red car as a Peglicia, an arguably smaller car than a Yugo.¹⁶⁵ Originally, there had been allegedly only three soldiers and seven victims, but it is the alleged joinder by co-accused Mitar Vasiljević later that makes the alleged number traveling in the two vehicles 11.¹⁶⁶

168. The involvement and identity of Mitar Vasiljević is a diametrically different issue than that facing Milan Lukić, because VG-14 actually socialized, having quite a few drinks with Mitar Vasiljević.¹⁶⁷ VG-14 also described the soldier vaguely known as Montenegro as having only two black streaks on his cheeks.¹⁶⁸

169. The involvement allegedly of Mitar Vasiljević in the allegations of 7 June 1992 becomes relevant when VG-14 describes Mitar as traveling in the Passat in the passenger seat

¹⁶⁰ T.307/20-25,308/1-14.

¹⁶¹ T.308/15-309/20.

¹⁶² T.306/15-24.

¹⁶³ T.306/21-25.

¹⁶⁴ T.310/3-11.

¹⁶⁵ T.447/23-448/9.

¹⁶⁶ T.313/21-25.

¹⁶⁷ T.314/15-25.

¹⁶⁸ T.315/1-9.

and the now fourth Serbian soldier traveling in the Yugo.¹⁶⁹ At this point the simple seating arrangements within the vehicles becomes illogical and remains unexplained by the witness VG-14. Assuming the seating arrangement of three Muslim victims and two soldiers in the alleged Passat, leaves a total of two soldiers and four victims to squeeze into a Yugo, which would be a very uncomfortable seating situation, to say the least. The witness VG-14 never clarified how the uncomfortable and nearly impossible seating arrangements worked en route to and from the scene of the crime. The seating arrangement becomes out right ridiculous if we assume that VG-79 is correct in identifying the red vehicle at the arena on 7 June 1992 as being a Peglicia.

170. VG-14 goes on to explain that once at the road by the Drina River, all the passengers exited the vehicles, walking to the Drina in a column single file.¹⁷⁰ An important fact described by VG-14 is the alleged order by the person he believed to be Milan Lukić for individual shots, even though the men allegedly had automatic weapons. This is important because the independent observer, VG-79, described with clarity hearing automatic gunfire in direct contradiction of VG-14.¹⁷¹

171. Ultimately VG-14 survived the alleged attack by Milan Lukić, Mitar Vasiljević, a soldier known only as Montenegro, and a fourth unnamed at this point. VG-14 immediately joined the war fighting for the Bosnian army.¹⁷²

172. On cross-examination, VG-14 intimated that he had never been in class with Milan Lukić as they studied different disciplines, and he further denied that Milan or Lukić were common names in the region. Although VG-14 initially said that he rarely spoke to Milan Lukić in school, under cross examination, VG-14 changed his story and claimed to have had a speaking relationship with Milan Lukić.¹⁷³ Noteworthy is the testimony by VG-14 that the person he knew as Milan Lukić in secondary school had Muslim friends, was quiet, was not the type of boy to be spoiling for a fight, and he had never heard of Milan Lukić being in a fight over ethnic or religious differences.¹⁷⁴ In expanding on the limited nature of their

¹⁶⁹ T.3179-11.

¹⁷⁰ T.319/5-10.

¹⁷¹ T.454/2-6.

¹⁷² T.346/1-8.

¹⁷³ T.349/21-25, 350/1-5.

¹⁷⁴ T.350/8-25, 351/1-3.

speaking relationship, VG-14 admits that Milan Lukić, despite the 300 to 400 students in a shift, was friendly enough to find the time to say hello to VG-14, a Muslim student.¹⁷⁵

173. Regardless of the weak identification evidence and significant illogical inconsistencies in the evidence, VG-14 gave some important factual and historical testimony relevant to the case. VG-14 confirmed that ethnic tensions were precipitated by the change in Bosnia to a multiparty system.¹⁷⁶ As would be logical, VG-14 conceded that his allegiance was to his own admission and religion when the two-party system began, and that he foresaw the war, believing that the Serbs wanted war.¹⁷⁷ Without any proof, VG-14 assumed that the person he believed was Milan Lukić left secondary school after the second year.¹⁷⁸

174. VG-14 conceded that Serbs were reporting stories about Green Beret troops perpetrating a Serbian genocide around Višegrad. Interestingly enough, however, VG-14 admitted that to him, the Green Berets were Serbian propaganda, and did not actually exist.¹⁷⁹ This is analogous to all Muslims using White Eagles or Chetnik to describe generally Serbian forces. VG-14's downplay of the Green Berets was followed by a denial of being in the early Muslim resistance¹⁸⁰ However, when questioned further on cross-examination, VG-14 wavered on his denial. VG-14 conceded that maybe he was part of the Muslim resistance and knew about his neighbors bombs.¹⁸¹ VG-14 further showed his bias towards the Bosnian cause by naturally polarizing his view in favor of Bosnian tactics and making universally judgmental claims about the Serbian offensive. VG-14's general bias and anger was funneled into the accusations against Milan Lukić. Taking into consideration the notoriety and personal nature of the accusations against Milan Lukić, the local population of Višegrad and refugees who congregated there naturally discussed the rumors circulating about Milan Lukić during and after the war. However, it is important to remember that except for the Behija Zukic allegations, Milan Lukić was unheard of before or during the JNA occupation. VG-14 also revealed his bias regarding those allegations when he showed a strong association, outrage and affinity with Mrs. Zukić.¹⁸²

¹⁷⁵ T.351/16-20.

¹⁷⁶ T.352/8-16.

¹⁷⁷ T.354/18-25,355/1-25.

¹⁷⁸ T.356/8-20.

¹⁷⁹ *Id.*

¹⁸⁰ T.359/8-17.

¹⁸¹ T.35913-25,360/1-9.

¹⁸² T.363/18-364/25.

175. Generally speaking, VG-14 verified the fact that the local Serbian population was conscripted and working in conjunction with the Army, which included local Serbs acting as soldiers and police.¹⁸³ Although VG-14 never saw Milan Lukić at any checkpoints at the beginning of the war.¹⁸⁴

176. VG-14 generally confirmed that the leader of Uzice corps was Jovanović who addressed the Muslim's at the soccer stadium, yet could not recall the local police commander or captain or the head of the S.D.S. party.¹⁸⁵ Although VG-14 had never heard that Jovanović asserted he was the commander of the White Eagles, VG-14 had also never heard that Milan Lukić was a member of, much less the leader of the White Eagles.¹⁸⁶ VG-14 confirmed that he did not know, but only assumed that it was White Eagles or paramilitary units that were taking away most persons and he could not confirm if the disappearances and arrests were done by the Uzice corps or the JNA.¹⁸⁷ Furthermore, VG-14 confirmed that during the same time many Muslims had their cars confiscated by the Serbians.¹⁸⁸ VG-14 confirmed that he and his family were victims of the regular JNA forces and that his brother had been arrested and beaten by the police.¹⁸⁹ Furthermore, VG-14 confirmed his belief that the White Eagles were actually under the protection of the Uzice corps and the JNA army.¹⁹⁰

177. When confronted with his early statements of 1998, VG-14 confirmed that his best recollection of Milan Lukić was of him having one or more large birthmarks on his right cheek.¹⁹¹ In looking at all the photographic or video evidence showing the face of Milan Lukić at various stages in his life from adolescence to adult, including but not limited to in court video, it is clear that Milan Lukić never had a mole or birthmark of a type described by the witness VG-14.¹⁹² Yet, when pressured on the contradictions created by claiming to see a

¹⁸³ T.367/10-25.

¹⁸⁴ T.368/8-15.

¹⁸⁵ T.377/10-15.

¹⁸⁶ T.381/6-20.

¹⁸⁷ T.381/1-13.

¹⁸⁸ T.381/13-25.

¹⁸⁹ T.383/1-14.

¹⁹⁰ T.383/13-25.

¹⁹¹ T.388/21-25.

¹⁹² 1D98,1D72,1D45,1D46,P229,P230,P231,P232,P249,P258.

mole on a face covered in black paint or soot, the witness began to vacillate on whether he'd actually meant the left or the right side of the face.¹⁹³

178. In speaking directly to the clothing or uniforms of the soldiers present 7 June 1992, VG-14 reaffirms that the person he believed to be Milan Lukić was wearing blue camouflage and not black uniforms, or black scarves, or black scarves with skulls.¹⁹⁴ This is important in consideration of the description of events in early statements of VG-79.

179. In addition to himself, VG-14 and VG-32, he named five other gentlemen as victims of 7 June 1992, yet in his testimony and statements he did not give sufficient demographic or background data to differentiate these named victims from other persons with similar or same names in the region. Therefore despite the attempts of Ewa Tabeau to make certain assumptions about the identity of the named victims, a beyond a reasonable doubt identity of the victims was never established. To illustrate the point subsequent to RFA, the Republic of Srpska, two persons cited by VG-14 and ultimately VG-32 as victims of 7 June 1992 actually made requests for property restitution as evidenced in a document submitted for admission from the Bar Table that has yet to be ruled on.¹⁹⁵

ii. VG-79

180. VG-79, a lifelong resident of Višegrad, was an apparent eyewitness to the incident of 7 June 1992. According to his testimony, VG-79 was traversing the countryside on the left bank of the Drina River.¹⁹⁶ Specifically as testified to, VG-79 claims to have seen Meho Dzafic and Amir Kurtalic as part of 10 or 11 men in two automobiles working their way down to the Drina River.¹⁹⁷ The identity of the two men is extremely germane to the fact that these are two identical names as persons listed as victims 7 June 1992 by VG-14 and VG-32. Although attempting to downplay the fact during trial, VG-79 noted his ability to positively identify the two alleged victims as he and a fellow Muslim were sharing binoculars. Notably, VG-79 was able to see only three soldiers with those civilians.¹⁹⁸

¹⁹³ T.390,391,392/1-8.

¹⁹⁴ T.393/2-13.

¹⁹⁵ See e.g. P119, 1D226.

¹⁹⁶ T.427.

¹⁹⁷ T.428.

¹⁹⁸ T.428,429/1-13.

181. Apparently VG-79 has been caught up in the rampant rumors of assumptions associated with the red Passat of Behija Zukić. Notably, VG-79 indicated that the red Passat visited his home with three persons wearing black hoods over their faces, and everyone accepted as true the story about who killed Behija Zukić and the red Passat.¹⁹⁹

182. Specifically VG-79 gave a statement to the Office of the Prosecutor, testified during the case of Mitar Vasiljević, and attached to his 2001 statement was a handmade sketch where VG-79 clearly drew the victims in the line across—not single file—in direct contradiction of VG-14.²⁰⁰

183. Furthermore, it was only during his 2008 testimony that VG-79 acknowledged the possibility of an 11th person as opposed to the 10 as he stated in his 2001 statement and testimony.²⁰¹ Also, in his original statement, VG-79 stated clearly that the binoculars were in his possession.²⁰² Logically, and assuming VG-79 had utilized the binoculars, he recently stated with clarity that the **three** soldiers about to execute his seven comrades on 7 June 1992 were wearing black uniforms with scarves with skulls on them, in direct contradiction of the physical descriptions listed by VG-14 and VG-32.²⁰³ Notably, only in 2008 and following proofing with the OTP did VG-79 attempt to interject the possibility of blue uniforms as opposed to black with scarves with skulls.²⁰⁴ Again, with the clarity and assistance of binoculars, VG-79 indicated that the red vehicle that accompanied the Yugo on 7 June 1992 was a red Peglicia auto, which would be of the type to make it difficult if not impossible to bring a total of 11 full-grown men to the riverbank in combination with a Yugo.²⁰⁵

184. Furthermore VG-79 specifically contradicts the testimony of VG-14 in so much that he describes the victims, including the two specifically identified by him, as having entered the water up to their knees, before shots were fired.²⁰⁶ Also, in contradiction of VG-14 and VG-32, VG-79 describes the three soldiers dressed in black, with scarves, with skulls on them, who fired their automatic weapons in bursts and not in single shots.²⁰⁷

¹⁹⁹ T.440/16-25.

²⁰⁰ 1D2, T.445/1-12.

²⁰¹ 1D2, T.445/16-21.

²⁰² 1D2, T.446/7.

²⁰³ 1D2, T.447/1-11.

²⁰⁴ T.449/1-9.

²⁰⁵ 1D2, T.447/12-25, 448/1-18.

²⁰⁶ T.451/1-10.

²⁰⁷ T.451/10-25.

185. Moreover, in his original statement of 2001, VG-79 specifically indicated that the executions he witnessed on the riverbank of the Drina on 7 June 1992 occurred at 11:00 AM, but then he recanted his earlier testimony to accommodate the descriptions by VG-14.²⁰⁸

186. VG-79 was able to speak to VG-14 and VG-32 immediately after the incident as well as a few days later, establishing a relationship.²⁰⁹

187. In clarifying the vehicles used for the execution VG-79 indicated that a Peglica and a Yugo or the same, two very small cars, had the capacity to transport 10 (or NOW 11) men on 7 June 1992 as opposed to a four door red Passat.²¹⁰ Given the size of a Peglica versus a Passat, this is highly improbable that there could be a mistake of identity between a two-door compact and a four-door midsize.

iii. VG-32

188. VG-32, like all OTP witnesses, referred to all the groups that were present in Višegrad in the spring of 1992 as White Eagles, noting references to Arkan's and Seselj's men, amongst others, and a general understanding that the groups headquarters was in the Višegrad hotel.²¹¹ VG-32 was intimately aware of the Behija Zukić matter and purportedly saw Milan Lukić in the red Passat. However, VG-32 did not have personal knowledge of the identity of alleged specific perpetrators. In fact, VG-32 only had an understanding regarding a "Lukić," which gives rise to a personal bias against Milan Lukić.²¹²

189. VG-32 recounts how he was stopped and detained on 7 June 1992. He described an individual with a black painted face wearing a blue camouflage uniform indicative of police, tennis shoes, a beret and double-headed Eagles on the kokarde and sleeves, with a Band-Aid on the arm.²¹³ VG-32 also described the man who arrested him as having a sniper rifle with a silencer.²¹⁴

²⁰⁸ 1D2, T.452,453/1-5.

²⁰⁹ T.453/13-25.

²¹⁰ 1D4, T.455.

²¹¹ T.11461-11.

²¹² T.1153/1-21.

²¹³ T.1161/1162.

²¹⁴ T.1163/12-15.

190. Interestingly, VG-32 recalled his friend had expressed his relationship to Branimir Savović, head of the SDS party, as being close friends with his friend, and he relayed that information to the soldiers.²¹⁵

191. VG-32 described that on 7 June 1992, he was riding in the backseat with difficulty in the Yugo with Meho Dzafic and a soldier, with Ekrem and his friend in the front seat.²¹⁶ This illustrates the point that it is virtually impossible for a total of 11 individuals to fit in a Yugo and what we would assert is a Peglicia. At a minimum, VG-32's description mandates that at least three Muslim men and three soldiers must have occupied the other vehicle regardless of whether it was a Passat or a Peglicia. This is a logical and not accounted for by either witness. The only witness that logically accounts for the discrepancy is VG-79 in so much that he documented only 10 persons originally exiting the two vehicles. Accordingly VG-32 could not explain or recall how a total of six persons had squeezed into the alleged Passat²¹⁷

192. The OTP used VG-32 and an entry purporting to be Milan Lukić in the Višegrad Health Center protocol book in an attempt to rebut alibi evidence. This evidence was admitted without proper foundation considering the fact that VG-32 was not a worker at the Višegrad health center on the date in question. Although he was able to correctly identify the protocol book, he would not have been present for entries documented 7 June 1992.

193. During his testimony, VG-32 did concur with VG-79 in so much that he described walking across the field in a line across and not in single file.²¹⁸ VG-32 concurred with VG-14 on several points, but their consistency is explainable considering their long relationship and association after the war.

194. Interestingly enough, VG-32's testimony transcended his own apparent victimization, as he became deeply associated with Zehra Turjaćanin otherwise known as VG-114. At the refugee centers following the exodus from Višegrad, apparently VG-32, a nurse at the Višegrad health center, was intimately involved in the long-term treatment of the

²¹⁵ T.1165/12-25.

²¹⁶ T.1169/1-21.

²¹⁷ T.1228.

²¹⁸ T.1179.

burns and wounds of Ms. Turjaćanin. This is both important and ironic considering that Ms. Turjaćanin is the sole²¹⁹ accuser against Milan Lukić, Sredoje Lukić, and Mitar Vasiljević in the counts known as Bikavac. VG-32 was present and attempting to treat Ms. Turjaćanin at the time that she was filmed in a video documentary giving many interviews.²²⁰ VG-32 did recall that Dr. Vasiljević had treated Ms. Turjaćanin and her burns which was otherwise confirmed by her as well, by Dr. Vasiljević his testimony during the Vasiljević trial, and the testimony of Mrs. Vasiljević.

195. On cross-examination, VG-32 conceded that persons documented on a certain day actually could've been seen on the preceding calendar day and conceded they could not verify the accuracy considering he was not there.²²¹ Also, VG-32 conceded, unlike VG-14, that Milan is a common first name in Bosnia and Serbia and that Lukić is a common surname in Bosnia.²²² It is noteworthy that no specific identifiers such as date of birth were included in regarding this Milan Lukić entry, 7 June 1992.²²³

196. Extremely relevant is the fact that VG-32 verified at least hearing that an execution at the river Drina had been disrupted by a Muslim sniper from across the river.²²⁴ This is relevant considering the Milan Lukić Defense pursued investigating the possibility of a sniper intervening in the 7 June 1992 incident as evidence in support of the Milan Lukić alibi for said date. The disclosure by VG-32 of the actual incident was proof positive that it did occur, however VG-32 denied that the sniper intervened during his attempted execution.²²⁵

197. On cross-examination, VG-32 clarified that the beret worn by Milan Lukić was light blue and that Mitar Vasiljević had a black cowboy hat.²²⁶ Importantly, VG-32 described the other two soldiers as wearing ordinary camouflage, one with the hat or beret and one without.²²⁷ Notably, this directly contradicts the independent recollection of VG-79, a recollection that is not tainted by the specific bias towards Milan Lukić. This is important because VG-79's description of the black uniforms with scarves and skulls is so diametrically

²¹⁹ T.1186.

²²⁰ T.1189,P67.

²²¹ T.1197,1198.

²²² T.1198.

²²³ T.1199.

²²⁴ T.1202,1203.

²²⁵ *Id.*

²²⁶ T.1208.

²²⁷ T.1209.

opposed to the testimony of VG-14 and VG-32 which between themselves have certain contradictions.

198. In describing the person that he believed was Milan Lukić, VG-32 could not recall any tattoos on the arms, and most important, could not recall a pronounced mole or birthmark on the face, regardless of black paint.²²⁸

199. VG-32 had never had occasion, despite being a longtime resident of Višegrad, to meet a person with the name of Milan Lukić of any age. The first time VG-32 met the person that he came to understand was a Milan Lukić was completely by hearsay.²²⁹ Also, there was nothing that indicated a Milan Lukić was a member of the White Eagles.²³⁰ VG-32 also confirmed that the Police received many vehicles and that many were parked outside the Višegrad hotel²³¹

200. VG-32 described a situation even when the Uzice Corps were in town wherein persons entered the Police station and were never seen again and that persons were arrested by the command structure and the community. VG-32 also confirmed that Brane Savović was the head of the SDS party and Ristro Perisić was the commander of the Police.²³²

iv. MLD25

201. In its case in chief, the OTP presented the testimony of MLD25 not as direct evidence of liability for the Drina River but instead, as alibi rebuttal.

202. MLD25 testified on his own behalf, but against Milan Lukić while at the same time attempting to mitigate as a snitch witness all his own liability. Naturally, MLD25 did not present his own case in order to protect Milan Lukić but instead to protect himself. At the time, Milan Lukić was not in custody and it was an appropriate perfect opportunity for MLD25 to attempt to distance himself from the Accused, Milan Lukić. His testimony can only be judged as self-serving. Clearly within the context of all testimony, MLD25 was only trying to save himself at the expense of truth and justice.

²²⁸ T.1209,1210/2.

²²⁹ T.1210/3-25,1211.

²³⁰ *Id.*

²³¹ T.1214/8-16.

²³² T.1216/19-1217, 1218/1219.

203. For instance, during his testimony, MLD25 confirmed information about the red Passat only because he learned the information from witness statements in his own case.²³³

204. The logical, if not practical, break in his knowledge and understanding is 14 June 1992, when a severe leg fracture eliminated his ability to participate in the war much less walk.²³⁴

205. Regarding the allegations of 7 June 1992, MLD25 testified and did not place himself in the Passat with Milan Lukić as did VG-32 and VG-14. Instead, MLD25 placed himself in the Yugo with a soldier named Raso Simsić, stating he could not recall the names of the persons in the Passat being a long time ago.²³⁵ Instead, MLD25 testified that he was seated in the backseat of the Yugo.²³⁶ Contrary to the two witnesses, VG-14 and VG-32, MLD25 placed the accused, Milan Lukić, in the alleged red Passat with a person known as Mitar Sinovic or Mijodrag or Mijo.²³⁷ To further distance himself, MLD25 denied being armed, or taking part in any assault.

201. MLD25, a long-standing associate of the Accused, was forced to testify merely to save his own skin. MLD25 without any forewarning, was violently arrested, bound, gagged and blindfolded, and transferred to The Hague.²³⁸ MLD25 was forced into the untenable situation of being falsely accused of the house burnings in Pionirska and Bikavac. MLD25 was falsely accused at Pionirska despite having broken his leg at approximately 4 PM, 14 June 1992.²³⁹ Of course, MLD25 was torn and tortured by the false accusations and the threats to his freedom. The gravity and weight of being accused of these kinds of atrocities would be the most difficult hurdle to overcome. It is incomprehensible to imagine what one might do with being under the weight scrutiny of such false organizations. Clearly there is more than enough pressures and ground for the accused MLD25 to want to do ANYTHING save himself.

²³³ T.149913-25,1500/1-9.

²³⁴ T.1500/20-25.

²³⁵ T.1502.

²³⁶ T.1504/1-7.

²³⁷ T.1504-1505.

²³⁸ T.1527/1-13.

²³⁹ T.1529.

206. MLD25 needed to separate himself from the accused Milan Lukić for fear of guilt by association.²⁴⁰ His testimony was given with the express hope of being acquitted and released.²⁴¹ Regardless, despite being given credibility regarding information that Milan Lukić was at the Drina and participated in the execution, MLD25 was not believed that he was innocent, unarmed, or tried to help the victims. MLD25 took a calculated risk that he would find freedom from his testimony, and that he might see his family again.²⁴²

207. MLD25 confirmed that another Milan Lukić from a more powerful family, also lived in Višegrad. This Milan Lukić was older than the Accused and died in 1993 or 1994.²⁴³ Furthermore, MLD25 recalled that the Accused was from a simple farming family and that they were not wealthy or powerful citizens of Višegrad²⁴⁴

208. Otherwise, MLD25 had had a life-long struggle with alcohol abuse, drinking almost daily from some time in the 1980s.²⁴⁵ His problem with alcohol was so bad, that he underwent treatment for his alcohol addiction and the Accused would pick up MLD25 to take him to the hospital, where he sometimes needed an IV to recover.²⁴⁶ MLD25 documented extensively that he drank heavily at the outset of the war.²⁴⁷ In fact, MLD25's alcoholism was complicated, if not exacerbated by psychiatric problems that included hallucinations. MLD25 was admitted for psychiatric treatment contemporaneous to his hospital stay in Uzice, with matters being complex and further complicated by difficulty in detoxification.²⁴⁸ Regarding the psychiatric admission, MLD25 went on to say that he had a phobia regarding things like a person dressed in black.²⁴⁹ His psychiatric condition included him having hallucinations wherein he felt and saw what others did not as he described them as being unrealistic.²⁵⁰

209. MLD25 routinely drank more than a liter of hard alcohol and got very drunk, sometimes waking up and not remembering how he'd gotten there. MLD25 admitted that the

²⁴⁰ T.153614-19.

²⁴¹ T.1537-1538.

²⁴² T.1540.

²⁴³ T.1541/13-17,1543/15-16.

²⁴⁴ T.1541/18-25.

²⁴⁵ T.1542-1543.

²⁴⁶ T.1543/1-10.

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ T.5171,5172.

²⁵⁰ T.5172/2-8.

influence of alcohol has caused many bad choices and had affected his job and family.²⁵¹ True to form, on 14 June 1992, MLD25 was spotted barefoot and with a bottle in his hand in the early morning.²⁵² When queried by the President of the Chamber, MLD25 could not recall how much he drank, because he drank all the time during the 15 years before and up to the war. In fact, preceding the incident 7 June 1992, MLD25 conceded to drinking as soon as he got up, sometimes drinking for a month at a time during binges, and otherwise focused and later recalled drinking five brandies of an undetermined specific quantity.²⁵³

210. Otherwise, MLD25 confirmed that Drago Gravrilović was the army commander for the town of Koritnik (the homes of the Pionirska alleged victims), Ristro Perisić was Commander of the Police, and that Brane Savović was the head of the SDS party.²⁵⁴ Despite the notoriety and severity of the overall allegations in the war surrounding area Višegrad, no other persons were charged with these serious crimes other than a waiter, a police officer, and Milan Lukić, a bartender before the war.²⁵⁵ MLD25 confirmed that hundreds if not thousands of soldiers participated in this war in Višegrad, and many villages and mosques were burned in and around Višegrad.²⁵⁶ MLD25 further confirmed that the Police in Višegrad took many Muslims' vehicles for officials to drive.²⁵⁷

211. Regardless, MLD25 confirmed that Milan Lukić was in the Police at the time of the outset of the war, having left the Police sometime after commander Tomić died.²⁵⁸ MLD25 further confirmed that Milan Lukić was a bartender in Switzerland immediately preceding the war and that he was not noticed in town until mid-May 1992.²⁵⁹

212. MLD25 admitted that he was motivated by fear of being convicted for the Drina or the fire incident.²⁶⁰ MLD25 confirmed that the whole case seems to be about Milan Lukić, with his role being merely an associate.²⁶¹

²⁵¹ T.1544.

²⁵² *Id.*

²⁵³ T.1546,1547, 5154,5155.

²⁵⁴ T.1547/12-25,1548/1-6.

²⁵⁵ T.1551.

²⁵⁶ T.1551.

²⁵⁷ T.1552.

²⁵⁸ T.1552-1553.

²⁵⁹ T.1553.

²⁶⁰ T.1554/16-25,1555.

²⁶¹ *Id.*

213. MLD25 testified that before Milan Lukić was in custody, he had the impression that he would never be arrested.²⁶²

214. MLD25 further confirmed that he testified in two other trials. One trial, *Lelek*, appears to involve similar if not identical allegations regarding the shooting at the Drina River. During one trial, OTP witness VG-63, testified that MLD25 was in Višegrad in and around the 25th to 30th of June 1992.²⁶³ The testimony of MLD25 directly disputed the proffered testimony of VG-63 and the other trial.

215. MLD25 revealed a real fear of losing his good time from the prosecution or the Court if his testimony deviated at all, stating, “it’s normal that I could be held responsible. Well, we ordinary people know about if you change your testimony and show contempt of court what’s going to happen to you, what awaits you? We all know that.”²⁶⁴ So much so, MLD25 admitted informally a fear that a Prosecutor would figuratively “break his legs” if he changed his testimony.²⁶⁵

216. MLD25 alone had personal incentive to seek vengeance on 7 June 1992 have buried his close relative, his first cousin, the day before the incident on the Drina²⁶⁶ He had been drinking that day and his drinking continued to the next. How hard is it to imagine him in a drunken state full of grief and rage?

v. Dr. Linda LaGrange

217. The Defense presented the expert testimony of psychopharmacology professor, Dr. Linda LaGrange. Dr. LaGrange has spent her academic career utilizing the scientific method in ascertaining the relationship between drugs and alcohol and human psychology.²⁶⁷ Dr. LaGrange explained how alcohol is a very interesting drug in that it has actions that particular group transmitter receptors, but it also interacts cellular membranes, indicating that alcohol

²⁶² T.1555.

²⁶³ T.5139.

²⁶⁴ T.5231/2-20.

²⁶⁵ T.5232/6-17.

²⁶⁶ 1D130,1D131.

²⁶⁷ T.5841,5842.

has two mechanisms of action which are entirely different but nevertheless have profound effects on behavior.²⁶⁸

218. With regards to the instant case, Dr. LaGrange was asked to reflect on the alcohol consumption habits of MLD25 based on hypothetical perspectives referencing evidence before the Tribunal.

219. Dr. LaGrange opined that the long-term effects of prolonged, chronic, heavy alcohol consumption are that there will inevitably be some organic damage to the brain because alcohol is toxic and the process of metabolizing alcohol also produces toxic byproducts of the free radical species. These free radicals readily bind to lipid and membranes of the cells and cause, in some cases, reversible cellular damage, which will result in long term memory loss, particularly in the frontal cortex.²⁶⁹ Dr. LaGrange described how persons consuming alcohol for 10 to 15 years with the most dangerous side effects resulting from binge drinking. During binge drinking, amazingly high blood alcohol levels immediately cause acute problems such as difficulty and ability to reason, plan, problem solve, and short- and long-term memory loss.²⁷⁰ Specifically, Dr. LaGrange explained how prolonged periods of alcohol consumption and binge drinking systematically damaged cell membranes to the point of permanent brain damage, which in turn affects executive functioning.²⁷¹

220. Furthermore, and relevant to his participation in the events of 7 June 1992, Dr. LaGrange explained how alcohol abuse, combined with brain damage in the frontal cortex, impairs one's ability to control impulses especially related to anger and aggression.²⁷² Dr. LaGrange explained how there exists a large amount of data on the correlative effects of alcohol and aggression.²⁷³ When given the additional information that a close relative was killed and buried in the days immediately before the actions of 7 June 1992, Dr. LaGrange explained that this type of stimuli or provocation's effect on displaced aggression.²⁷⁴

²⁶⁸ T.5847/9-13.

²⁶⁹ T.5848/18-25.

²⁷⁰ T.5149/18-25.

²⁷¹ T.5150-5856.

²⁷² T.5857-5858.

²⁷³ *Id.*

²⁷⁴ T.5860.

221. Dr. LaGrange also explained that state-dependence-memory could affect the reliability and credibility of testimony proffered by an intoxicated witness to an incident. She explained that state-dependent-memory relates to the intoxicated witness' ability to recall facts only while in a similarly inebriated state.²⁷⁵ Dr. LaGrange opined that the long-term effects of prolonged, chronic, heavy alcohol consumption inevitably includes some organic brain damage because the process of metabolizing alcohol produces toxic free-radical byproducts.²⁷⁶

vi. Conclusion

222. In sum total, the testimony brought forth by the Prosecution regarding the Drina River incident is comprised of scattered and contradictory facts that result in unreliable evidence and substantial reasonable doubt. The witnesses have provided information that was either biased in some manner or unreliable – both affecting any credibility. As such, Milan Lukić must be found not guilty of the Drina River charges in the Indictment.

C. THE PROSECUTION HAS FAILED TO ESTABLISH THE LIABILITY OF MILAN LUKIĆ FOR THE ALLEGATIONS OF COUNTS 6-7 RELATING TO THE VARDA FACTORY.

223. Counts 6 and 7 of the Indictment set forth allegations against Milan Lukić relating to an incident whereby it is claimed seven Muslim men were removed from the Varda factory, taken to the Drina River, and shot and killed.²⁷⁷

224. It is alleged that this incident occurred on 10 June 1992.

225. It is alleged that the victims so killed were Nusret Aljosevic, Nedzad Bektas, Musan Cancar, Ibrism Memisevic, Hamed Osmanagic, Lutvo Tvrtkovic, and Sabahudin Velagic.

226. A total of three eyewitness witnesses were led by the Prosecution in its attempt to prove this charge of the Indictment, VG-17, VG-14, and VG-24. John Clark was led as to forensic proof of death, and Ewa Tabeau was the sole proof of death beyond that.

²⁷⁵ T.5861.

²⁷⁶ T.5863,5864.

²⁷⁷ Second Amended Indictment, para. 6.

227. For the reasons set forth herein below, the Prosecution has failed to meet its burden of establishing the charges beyond reasonable doubt.

i. Insufficient proof of death

228. As a starting point, it should be noted that the evidence led by the Prosecution as to proof of death is rather scant and unimposing. One body, identified to be Hamed Osmangić, was located in the Slap graves.²⁷⁸ However, there is little more evidence beyond that to be able to link this body to the alleged crime. Quite simply, the Prosecution has failed to meet its burden.

229. The testimony of John Clark was presented as to the body that was recovered of Hamed Osmangić at Slap. However, Dr. Clark could merely assume/speculate that the autopsy being presented by the Prosecution²⁷⁹ was relating to the body identified as Hamed Osmangić, insofar as he was not part of the identification process.²⁸⁰ Further, the two documents presented are in direct contradiction to one another, with P123 noting the gunshot wound but “no other obvious injuries or significant findings;” whereas P124 notes that identification was made “by the skull: pre-mortem nose fracture.” There is no explanation by the Prosecution for the fact that a significant injury that is the basis of identification for the scheduled victim is completely non-existent in the report of Dr. Clark. Given this uncertainty, it cannot be reasonably concluded based on the evidence what manner of death the body identified as Hamed Osmangić suffered.

230. Further, Dr. Clark was very circumspect in his findings and conclusions relating to this and the other bodies found at Slap. He stated that he had very little information as to where on the river or otherwise the bodies were actually killed before ending up in Slap.²⁸¹

231. Dr. Clark also went on to testify under oath that he could not exclude that the injuries demonstrated on the bodies resulted from combat rather than civilian casualty.²⁸²

²⁷⁸ P124.

²⁷⁹ P123.

²⁸⁰ T.2107/9-2108/21;2111/12-15.

²⁸¹ T.2110/25-2111/2.

²⁸² T.2114/19-24.

232. Dr. Clark further confirmed he could not specify when the individuals died or how long they had been buried.²⁸³ He also specified that he could not determine that the bodies at Slap had ever been in the water before being buried,²⁸⁴ and that it is possible they were never in the water.²⁸⁵

233. In total, Dr. Clark's testimony could not advance the Prosecution arguments to establish the burden of proof beyond a reasonable doubt even as to the one body recovered, let alone the scheduled victims for whom no bodies were ever recovered.

234. Ewa Tabeau, the in-house demographer of the Prosecution, was essentially presented for these and other counts of the indictment as the **sole** proof of death for the murder allegations. However, her evidence on this score leaves considerable doubt.²⁸⁶

235. P119 indeed does not establish nor report that the Hamed Osmangić body located at Slap relates to one of the scheduled victims for Varda. Further, P119 adds details for UNCHARGED victims of Varda, for whom no evidence was led by the Prosecution, and whose mere existence would call into question to the testimony that was led. Respectfully, it is improper and impermissible for uncharged victims to be the basis for any criminal responsibility being assessed in this case.

236. Additionally, for the actual charged victims of Varda, very few have any data as to the persons being reported missing to the ICRC/Red Cross. One person, Ibrsim Memisević, listed on P119 as a victim, and identified by alleged eyewitnesses as having perished, is indeed found to be alive and well, living in Sweden, and now seeking return of his property in Višegrad.²⁸⁷ VG-17 testified that he helped bury the body of Memisević²⁸⁸; although apparently no one from the Prosecution was able to use this information to locate this body of Memisević, for surely that would have been standard operating procedure following the first interview with VG-17. VG-42 also claimed to be involved in the burial of Memisević, although she was not mentioned by VG-17, and she claimed Memisević was buried in front

²⁸³ T.2119/19-25.

²⁸⁴ T.2122/5-12.

²⁸⁵ T.2122/15-18.

²⁸⁶ P119.

²⁸⁷ 1D226.

²⁸⁸ T.2710/5-10.

of his own front door.²⁸⁹ Now we know why this body was never dug up, because investigators were looking for a corpse when in fact there isn't one. With the paucity of Prosecution evidence on proof of death, this circumstantial evidence must be taken for the reasonable inference that the Ibrisim Memisević listed as a victim and this one alive in Sweden are one in the same. As such, it calls into question the propriety of P119 and the eyewitnesses. This is especially true given our other analysis of the flaws of P119, discussed elsewhere.

ii. Analysis of witnesses shows inconsistencies that cast reasonable doubt

237. In addition to the foregoing, it must be taken into account that the witnesses themselves provide problems for the Prosecution meeting their burden of proof.

238. VG-17 was the first witness to testify. His recollection was immediately called into question since he could not even identify the date of the alleged incident, save to state that it is before he left Višegrad on 18 June 1992.²⁹⁰ Also as a preliminary matter, this eyewitness testimony has to be viewed with the consideration that the man was hiding in a chicken coop much removed from Varda at the time he alleged to see the things he did.²⁹¹

239. His entire identification is of suspect credibility since it is based on seeing a car previously driven by Behka, but that day driven by someone he later heard was Milan Lukić.²⁹² However, mere moments later the witness changed his testimony to state that that the car came to Varda all the time, had come to his house once prior, and it was Milan Lukić, and the owner of the car was now someone named Zukić, but he didn't recall the first name.²⁹³ Later again the owner was Bekha Zukić.²⁹⁴ This immediate change in testimony calls into question the credibility and veracity of the same.

240. Remarkably, the testimony kept changing thereafter, with the witness claiming he was certain it was Milan Lukić, because he had seen Milan Lukić previously on 2 or 3

²⁸⁹ T.2792/3-10.

²⁹⁰ T.2659/6-14.

²⁹¹ T.2847/8-12.

²⁹² T.2693/7-18.

²⁹³ T.2693/19-2694/18.

²⁹⁴ T.2713/12-16.

occasions.²⁹⁵ This is directly contrary to his testimony and 1998 sworn statement that he did not at the time of the Varda incident know it was Milan Lukić, and only heard from others later.²⁹⁶

241. The witness claimed under oath that Milan Lukić on that day was in plain clothes with three other persons, and took out Nedžad Bektaş and others.²⁹⁷ VG-17 goes on to say that Milan Lukić shot and killed these men.²⁹⁸ As stated earlier he also claims to have buried a man who is in fact alive. VG-42, claiming to have eye witnessed the same killing, says that Milan Lukić was dressed in a camouflage uniform.²⁹⁹ She also claims to have buried Memisević. Neither notes the other's presence at the burial. These critical contradictions cannot be reasonably reconciled.

242. Another factor as to the credibility of this witness relates to his testimony as to Behia Zukic. When asked when in 1992 the Behia Zukic body was discovered, the witness stated in the beginning of 1991, she was the first victim.³⁰⁰ This is mistranslated by the Translator as 1992, an objection is made that the translation is wrong, and rather than following the advise of the Defense counsel AND interpreter that the tape be checked, the Trial Chamber orders the point moot in relation to the 'clarification' and orders to not waste more time on this.³⁰¹ However, the official audio recordings of the trial, at approximately 10:56:27-10:56:35 record the witness clearly and without hesitation identifying the death of Behia Zukic as being in 1991.

243. This is a critical factor, when one takes into account that VG-17, who gave multiple prior statements, in 1998³⁰² and in 2008³⁰³ about his allegations as to the Varda incident, NEVER mentioned Behia Zukic's Passat as being at Varda until the proofing session of 8 October 2008 (immediately before testifying), a fact he confirmed under oath.³⁰⁴ It certainly tests the bounds of logic to believe that a person whose identification of Milan Lukić relies on

²⁹⁵ T.2695/4-12.

²⁹⁶ T.2724/1-4;1D63.

²⁹⁷ T.2692/23-16.

²⁹⁸ T.2699/21-24.

²⁹⁹ T.2790/22-2791/3.

³⁰⁰ T.2715/14-2716/19.

³⁰¹ T.2715/14-2716/19.

³⁰² 1D63.

³⁰³ 1D64.

³⁰⁴ T.2719/1-4;2722/5-9;2737/17-20.

the Passat does not mention it at all until being proofed by the Prosecution just before testimony, and then in testimony misses the year that Behia Zukic was killed. The witness for the first time recalls just prior to testifying that Milan Lukić drove by in that car multiple times³⁰⁵; and then the witness can't even remember the color of the car.³⁰⁶ Later the witness describes the car as a limousine, white.³⁰⁷ Respectfully, such testimony cannot be regarded as truthful.

244. Even more doubt is cast into the equation when one considers that VG-17 kept claiming to know Milan Lukić, but at the same time not to know Milan Lukić, and when pressed could not come up with any knowledge of Milan Lukić or his family.³⁰⁸ Eventually, though confirming he only learned of Milan Lukić's identity later, he steadfastly claimed to personally know Milan Lukić from before.³⁰⁹ This evidence is irreconcilable. It is interesting to note that he kept referring to 'womenfolk' who told him that the person he did not know was Milan Lukić. The possibility cannot be eliminated that VG-42, who testified after VG-17, and presumably was in the hotel in The Hague simultaneous to him, is the source of his identification of Milan Lukić, leading to questions of witness contact and tampering.

245. No reasonable trier of fact can consider and rely upon such inconsistent and scattered evidence such as that of VG-17 in the instant matter, to be sufficient to be the evidence relied upon to prove such a serious murder case.

246. VG-42 was not much better on the credibility/believability scale as a witness. She too could not identify the actual day when it is alleged that this killing happened.³¹⁰ This is contradicted by her sworn statement to the Office of the Prosecutor wherein she said it is around 10 June 1992.³¹¹

247. VG-42 testified, among other things, to being born in 1946³¹² and that she got married very young, at the age of 15, and did not go to school thereafter.³¹³ Although she

³⁰⁵ T.2723/14-22.

³⁰⁶ T.2723/23-25.

³⁰⁷ T.2740/21-23.

³⁰⁸ T.2724/10-2725/25.

³⁰⁹ T.2744/12-2745/3.

³¹⁰ T.2786/20-2787/1.

³¹¹ 1D68.

³¹² T.2777/5-6.

³¹³ T.2816/12-15.

testified that her sons were born in 1966, 1965, 1970, and 1973³¹⁴, remarkably she testified that she would see Milan Lukić on the school bus before she got married,³¹⁵ when Milan would have been about 8 to 10 years old.³¹⁶ This is simply unfathomable, as age differences make this impossible. The credibility of the witness must be called into question.

248. VG-42's credibility was also called into question regarding statements she made to law enforcement officials when she "didn't remember" the names of the three remaining Varda employees who were removed and killed. Today, her clarification for the Prosecution states that her own husband and enumerated officials were murdered at Varda.³¹⁷ The remaining eyewitnesses, it should be noted, did not apparently see any of the extra three spoken of by VG-24, which calls into serious question the Prosecution's case.

249. There was also the issue over why none of her prior statements mentioned that she eye witnessed Behia Zukic's car being taken away, something that she articulated for the first time at the Tribunal, stating that she eye-witnessed Milan Lukić do this.³¹⁸ With such a critical fact it defies logic that she would all of the sudden recall the same only for purposes of this trial. It is a joke, and an affront to logic and to justice.

250. Lastly, the testimony of VG-42 can be summed up best by her firm testimony that Milan Lukić was over 40 years old at the time she saw him committing the Varda killings; "I am sure he was," she said.³¹⁹ Surely, if this witness saw any such killing at Varda, it was not Milan Lukić whom she saw there.

251. VG-24 was the last prosecution witness to testify as to the Varda incident. That witness claimed the Varda killings occurred on the 9th of June 1992, since the 10th was Bajram and no one would have worked that day.³²⁰ It should be noted that none of the 3 witnesses testified to the date that is alleged in the Indictment. Surely this says something about the veracity of the case presented by the Prosecution.

³¹⁴ T.2816/1-4.

³¹⁵ T.2779/25-2780/7;2781/14-22.

³¹⁶ T.2820/7-22.

³¹⁷ T.2823/14-2824/25,1D66.

³¹⁸ T.2825/18-2826/6.

³¹⁹ T.2832/10-13.

³²⁰ T.3225/10-21;3263/25-3264/5;T.3264/12-19.

252. VG-24's imprecision and lack of clarity as to the dates and her own age when she met Milan Lukić and traveled on the school bus³²¹ with him call into question her recollection and knowledge of Milan Lukić, as well as the veracity of her testimony.

253. Added to that, the depictions of what she saw as to critical facts of the killing themselves changed (i.e. did not exist in her prior statements and then did exist in her testimony before the Tribunal).³²² Such things directly impact negatively on an assessment of her credibility.

254. Lastly, VG-24 was one of the few Prosecution witnesses who was shown photographs that she identified as being Milan Lukić.³²³ However, when the Prosecution later "found" the missing photographs in the before unchecked "Višegrad" locker that were unavailable when VG-24 testified, we see that the photographs she identified as Milan Lukić do not depict the Accused, but rather his brother, Novica Lukić, with a moustache and a birthmark on his face, who was killed by Bosnian Serb Police after the war in 2004.³²⁴ As such, her testimony must fail in whole, as it is a fabrication, not based on facts she eye witnessed. This is supported by the fact that the witness was called in to give a statement to Bakira Hašević, precisely around the time of the killing of Novica Lukić.³²⁵

iii. Description of incident by witnesses implausible based on site visit and location information

255. VG-42 identified the terrace of the home where she was situated when she claimed to eyewitness the Varda killings.³²⁶ She claimed the distance of this terrace to the site of the killings was 50 meters as the crow flies to the gate, 100 meters to the river.³²⁷ A videotape was shown to the witness by Defense counsel for Sredoje Lukić, taken from the scene, which demonstrated that the distance in question is much more than the witness testified to, and that in fact visual recognition of persons standing that far away was implausible from the terrace.³²⁸

³²¹ T.3252/16-3255/8.

³²² T.3266/23-3267/25.

³²³ T.3271/19-3272/14.

³²⁴ 1D75.

³²⁵ T.3274/4-3277/4.

³²⁶ T.2793/18-2794/7;P153,C1 (under seal).

³²⁷ T.2791/5-20.

³²⁸ T.2848/2-2583/20;2D23.

256. When confronted by this irrefutable video evidence, VG-42 became belligerent and refused to answer questions, stating:

*“I don’t want to look at this. It’s not that. Don’t ask questions. Do you think I am stupid? I am not stupid, and I was even cleverer before the war. It’s them that made me lose my nerve, but I was very clever. Never mind that I am not educated. God gave me a brain, so I’m not stupid.”*³²⁹

257. Furthermore, the Defense expert, Mr. Cliff Jenkins, traveled to the site to compare the purported testimony to the physical layout of the site. He noted the large area of the Varda Factory, with the entirety of the campus covering millions of square feet,³³⁰ and marked distances of closer to 200 meters from the vantage point of VG-42.³³¹

258. In Mr. Jenkins’s testimony, he discussed how as an investigator preparing the case, he would have liked to have more information about the interaction inside the factory and eyewitnesses on the floor who saw the men being arrested or detained to ensure that the proper case was brought.³³² In particular, the statement of VG-31 was someone he believed to have more reliable information as he was on the floor of the factory at the time; VG-31 was not called in the present case, rather, those with vantage points of up to 200 meters away were called to comment on the alleged perpetrators.

iv. Others named as assailants

259. The Defense had the statement of an individual, VG-31, on its exhibit list, and he was listed on the initial Rule 65ter witness list of the Defense. This was a former Prosecution witness not called by the Prosecution who named two other individuals as the persons who took out and killed the Varda scheduled victims. The Prosecution refused and obstructed getting the Defense the contact information for this individual.

260. After the Defense was forced to cut down its witness list, this witness was removed from the list. However, when the Defense sought to add him to the list, the Trial Chamber denied the same.

³²⁹ T.2582/22-25.

³³⁰ T.6576/20-25;6576/1-2.

³³¹ 1D216.

³³² T.6494/1-25;6495/1-25;6496/15-25;6497/1-20.

261. As mentioned above, Mr. Jenkins testified as to the statement, and the Trial Chamber reserved ruling on the same.

262. This is a critical piece of evidence in that an eyewitness exists who did not see Milan Lukić at Varda on the date of the killings and saw two other persons take out the named victims and kill them. As such, this statement goes toward establishing the lack of credibility of the Prosecution's case and should be considered by the Trial Chamber.

263. Overall, lacking the majority of forensic remains or proper death notifications and eyewitnesses who were at close range to identify the perpetrators, Defense investigations expert Mr. Cliff Jenkins concluded that he believed, as an investigator, that the evidence presented is lacking sufficient grounds to warrant conviction, and he would have required a better case to present to a prosecuting body to ensure conviction.³³³

264. Inconsistency in the stories of Prosecution witnesses, coupled with sharp failures in victim proof-of-death and insufficiency of the evidence led indicates that Milan Lukić should be acquitted on this charge, as the Prosecution has failed to shoulder its burden of proof, demonstrating that Milan Lukić is not guilty of said same.

D. THE PROSECUTION HAS FAILED TO ESTABLISH THE LIABILITY OF MILAN LUKIĆ FOR THE ALLEGATIONS OF COUNTS 8-12 RELATING TO THE PIONIRSKA FIRE

265. Counts 8-12 of the Indictment set forth allegations against Milan Lukić relating to an incident whereby it is claimed that on or about 14 June 1992, approximately 70 Bosnian Muslims were stripped of their valuables and later killed in the burning of the house.³³⁴

266. Schedule A of the Indictment sets forth the named victims from the alleged Pionirska Counts of the Indictment, and has been the operative notice to the Accused of the Case that he has had to defend since its date of issue of 27 February 2006.

³³³ T.6497/15-18.

³³⁴ Second Amended Indictment, para. 6.

267. A total of eight witnesses were led by the Prosecution in its attempt to prove this charge of the Indictment: VG-13, VG-18, VG-38, VG-84, VG-78, VG-101, VG-115, and Huso Kurspahić. Six of these witnesses were alleged victims of the Incident, one – VG-115 – claimed to be an eyewitness, and one the son of a later-deceased survivor victim.

i. VG-13, VG-18, VG-38, VG-84

268. These four witnesses are comprised of two mother-son pairs who are alleged to have been in the column of people in the daytime and later escaped the Pionirska fire through a window. The most important element of their testimony in relation to this trial, however, is that none of these individuals knew Milan Lukić before the war and even in their descriptions of the Pionirska street incident cannot verify who was actually there.

269. The trouble with identifying the assailants at Pionirska is easily divided into two segments of the day. In the earlier hours, during the allegations of looting, and later in the evening when the men in uniforms return with regard to the allegations of the house burning.

270. In the looting allegations, there's much discussion about other people in the house identifying certain men in uniform as 'Milan Lukić' or 'Sredoje Lukić' and some testimony that the men introduced themselves, however, when hard pressed to find out exactly what was said and who made the identifications, the witnesses cannot be specific. Of particular note, VG-18 explains:

*"I've said any number of times that I was in a group of people and that I just heard who said what. I didn't look around who was Milan, who was Sredoje. So I'm looking at them now and I don't really know. I can't say. I can't recognise which is which or who is who. I just heard people saying in that group of people that one of these men was Milan Lukić and that the other was Sredoje Lukić, and had they not introduced themselves, well, I wouldn't have even have known their names, but they gave their names themselves. So don't tire me with that any longer. I'm not a fortune-teller to know whether this one's Milan and that one's Sredoje."*³³⁵

271. VG-18 is completely unable to have identified Milan Lukić not only on or before the events of 14 June 1992 but apparently to this day, stating: "...Maybe I mixed their names up,

³³⁵ T.1365/3-12.

because I don't know who's who even now. So I might have mixed the two of them up. I didn't know them from earlier on, and I hadn't seen them, so maybe I mixed that up. They introduced themselves and said Mitar Vasiljević and so on."³³⁶ VG-13 likewise did not know Milan Lukić.³³⁷ Both VG-38 and VG-84 are teenaged boys in June of 1992 and admit that most if not all of their reliance is on the elders who made the identification determinations for them. Like VG-18 and VG-13, they did not know Milan Lukić.³³⁸

272. This is important considering VG-13 insists on seeing Mitar Vasiljević there in the late evening hours, when it has been established that he could not have been there.³³⁹

273. Of the identifications of Milan Lukić at the house in the evening, they are not only all in conjunction with Mitar Vasiljević, references state they are right next to each other³⁴⁰ – often described behind a flashlight, a difficult position in which to see and identify someone.

274. It should be noted that VG-13 is also the only one of three who notes that the carpet has a liquid that exudes a smell and notes: "We were choking on it."³⁴¹ This assertion is somewhat implausible as not mentioned by any of the other three people she is with at the time. In fact, VG-84 claims he was not scared at that moment when they were in the house, rather explaining that he remained calm:

*"I was sitting on that table. My mother was already ready close to the window. She was an adult and she knew what was in the offing. I was just a child. Only when the fire started and the grenades did I realise."*³⁴²

ii. VG-078 & VG-101

275. These witnesses are sisters who allege they were there at the first house and then snuck out of the line when moving on to Adem Omeragić's house.

³³⁶ T.1342/12-18.

³³⁷ T.1101/15-16.

³³⁸ T.1245/23-24; T.1011/21-25.

³³⁹ T.1090/18-1091/2.

³⁴⁰ T.1073/19-24.

³⁴¹ T.1043/11-19.

³⁴² T.1257/1-8.

276. The most striking thing about their testimony is that they both claim to see Milan Lukić aside Mitar Vasiljević that evening as the group is transferring from one house to another.³⁴³ VG-78 was so wed to her belief that Mitar Vasiljević was there that when put to her the possibility he was not due to a broken leg, she said it would not change her mind: “*That never happened. He never broke his leg.*”³⁴⁴ Her sister’s answer was almost identical.³⁴⁵

277. Both women describe hearing shots as they made their way through the woods, but neither noted flames or anything associated with fire and noted nothing about explosions or grenades.

iii. VG-115

278. VG-115 provided testimony in regard to the events of both the Pionirska and Bikavac fire incidents. She became a witness in this Tribunal, first in the case of *Prosecutor v. Mitar Vasiljević*, by herself writing to the Office of the Prosecutor. The time she wrote was after the Indictment had been issued by the ICTY in 1998, outlining the crimes for which she now provides testimony.³⁴⁶ She claims what prompted her was a “personal crisis in life”,³⁴⁷ though no further detail about that has ever been explained. In her statement, she states that upon Mitar Vasiljević’s arrest, she had seen his picture in a Bosnian newspaper.³⁴⁸

279. Through her testimony and admitted statements, VG-115 claims to have been an eyewitness to multiple events in Višegrad during the relevant time period, and a non-victim eyewitness to both house-burnings alleged in the Indictment. In addition to Pionirska and Bikavac, she claims to have been an eyewitness to an unbelievable, mythic number of killings by Milan Lukić not charged or even mentioned or heard of by any other witness from Višegrad.

280. With regard to the Pionirska Street incident, in her statement of 2000, VG-115 claims that in the evening “close to curfew time” she saw people forced into the house of

³⁴³ T.1446/19.

³⁴⁴ T.1411/11-1412/6.

³⁴⁵ T.1467/8-20.

³⁴⁶ 1D19,p.1065.

³⁴⁷ *Id.*

³⁴⁸ 1D18.

Adem Omeragić and claims that she “saw that they were throwing various devices for setting fire into the house including hand grenades and gasoline.”³⁴⁹ She claims she rushed into her house and from her balcony she “could see smoke and fire and [she] could hear the screams.”³⁵⁰ She claims that she ‘definitely’ saw Mitar Vasiljević (making sure to mention both ‘the old one’ and ‘the young one’) along with ‘Milan Lukić’ and ‘Sredoje Lukić’. These three names given, ensuring she would get the right ‘Mitar’ by stating both the old and young one, were the three names of the 1998 Joint Indictment and the only names given, despite stating she saw ‘a lot of members of Lukić’s group’.³⁵¹

281. In her earlier statement and testimony, she claims to see Mitar Vasiljević at the column of people of the Pionirska fire. However, she stated that once in her house “even if she wanted to” she couldn’t see Mitar Vasiljević or Milan Lukić and stated she “couldn’t recognize anyone from among the people who were doing this” and that “it was already dark.”

282. In regards to her earlier identification of Mitar Vasiljević, VG-115, either through attempting to correct her story or by sheer mistake, in this trial states that Mitar Vasiljević was still there on the road when a column of people were passing, claiming: “*He was on a white horse, astride a white horse. He had a plaster cast on his leg and could not walk.*”³⁵² When confronted with the fact that she had never mentioned the horse in prior statements or testimony regarding Pionirska,³⁵³ she answered in a defensive and confused manner, stating:

“THE WITNESS: [Interpretation] Well, now you've taken me back quite a lot. The gentleman's trying to confuse me as regards the woman who was in the street and where I was and where Mitar Vasiljević was, where the column was, and there were many people there too. I often did see Mitar Vasiljević astride a horse because he wore a plaster cast on his leg. He would often be seen in town or on the street on a horse probably because he couldn't walk –”³⁵⁴

283. In her *Vasiljević* testimony she did discuss him being in a cast and on horseback at some unspecified time later in the summer or autumn,³⁵⁵ but never in regard to Pionirska.

³⁴⁹ 1D18, p.11.

³⁵⁰ 1D18, p.11.

³⁵¹ 1D18 p.11.

³⁵² T.763/20-21.

³⁵³ T.763/24-764/6.

³⁵⁴ T.764/7-13.

³⁵⁵ 1D19,p.1029.

This change is not the first in her testimony. In her *Vasiljević* testimony, there is a woman who decides to leave the column and “Mitar didn’t do anything bad. He didn’t react at all....”³⁵⁶ In her present testimony, the story changes entirely to: “Mitar Vasiljević did not speak nicely with [name redacted], a neighbour of mine, the woman who was in the street. He actually yelled at her because she managed to wrest away herself from the column which was going to town.”³⁵⁷

284. In sum total, it was extremely difficult to elicit testimony on a seemingly simple topic as to where she actually saw Mitar Vasiljević.³⁵⁸ Finally, she makes designation of the last place she saw him, iterating because he was conspicuously on a horse.³⁵⁹

285. It should be noted that NO other witnesses recalled or made note of Mitar Vasiljević being on a white horse or having a plaster cast on his leg, despite what would be – in this witness’s own words – ‘conspicuous’ details.

286. The Defense asserts that VG-115 had such difficulty in these tasks of marking the map because she was struggling to resolve how Mitar Vasiljević could still fit into her story, despite the judgement against him. She claims to have not seen the final judgement in his case, nor to have had any knowledge of how that Trial Chamber found her to not be credible; yet, somehow, her testimony in this trial managed to change to accommodate some of the unreliable portions of her testimony, in particular, how she confused Mitar Vasiljević with Mitar Knezević and how Mitar Vasiljević could have been present despite being found to be unavailable because of a broken leg.

287. Further, VG-115 attempts to reconcile that she could not have seen what she claims in her earlier statements and even today in regard to any fire at the Omeragic house. In her testimony in this case, she continues to claim she was an eyewitness to the fire, stating: “One could see flames, high flames, and the smoke billowing up in the air; and everything could be heard because there was such a loud noise, such a loud explosion, sound of explosions.”³⁶⁰

³⁵⁶ 1D19,p. 1021.

³⁵⁷ T.763/17-20.

³⁵⁸ See 1D21; T.762/24-766/12.

³⁵⁹ T.767/6-13.

³⁶⁰ T.687/23-25.

288. From the house she claims to have been in on the evening of the Pionirska fire,³⁶¹ there is no way she could have seen the flames or any details of where the fire would have been coming from. The house directly adjacent to the house she was in would have prevented her from seeing anything from the balcony or out of any windows. The witness claimed that she did not remember that house being next door and stated that windows ‘were on all sides’³⁶²; however, in her testimony in *Vasiljević*, she indicates that “[t]he windows faced three different sides, as did the balconies”³⁶³ which would be consistent with the adjoining house preventing windows on the fourth side and would have directly blocked her view. However, she did agree that the homes across the road would have existed at the time³⁶⁴; those houses, when coupled with the gradation of the land, would have blocked any direct view.

289. Defence expert Cliff Jenkins indicated where the Pionirska building was in the relevant neighborhood, and marked the balcony from which VG-115 claimed to have seen the flames of Pionirska; a view from which he was able to see himself.³⁶⁵ Further, he drew a map to indicate the gradation and slope he experience in the neighborhood that would also affect the view available to VG-115.³⁶⁶ From his own vantage point and examination of the scene, he had strong doubts about her claims of seeing anything other than smoke or ambient light from this vantage point, stating: “as far as any actual activity at the scene, you couldn't see from this location.”³⁶⁷

290. This is further exacerbated by her time estimations. In her initial statement, she claims the Pionirska fire happened around 7 or 8 p.m.,³⁶⁸ which would – in June – make it still light outside. Additionally, she claimed that the sounds lasted for 1.5 to 2 hours, which for reasons outlined in the forensics section, would also be implausible.³⁶⁹

291. Regarding the other actors, she has a strange pattern of stories about Slobodan Roncević that also lend to eroding her credibility. In the present trial, after claiming to have

³⁶¹ P31.

³⁶² T.788/9-10.

³⁶³ 1D19,p.1025.

³⁶⁴ T.788/2-6; 2D3.

³⁶⁵ 1D209.

³⁶⁶ 1D210.

³⁶⁷ T.6466/1-2.

³⁶⁸ 1D19,p.1026,1052.

³⁶⁹ 1D19,p1025.

seen this man participate in the Bikavac fire, she, days later, asks the man for a ride home, causing occasion for him to brag about the incident to her.³⁷⁰

292. It should be noted, that not only does she acquiesce to his classification of ‘mass-murderer’ in the question, but that her original statement tells a horrifying tale about the murder of a man named Mr. Kahriman:

*“Mr. Kahriman’s hands were handcuffed and I saw Slobodan Rocevic approaching him more frequently than the others with a knife. Later on, as the corpse was lying there for a couple of days, the neighbors said that his hands and ears were cut off. I will never forget the horrific screams and if it had not been for my daughter I would have committed suicide.”*³⁷¹

293. Despite the apparent problem with not knowing how she came to watch this scene in the meadow or how much she saw, suffice it to say, if this incident was indeed true and thus traumatizing, it is beyond comprehension how she could have been in the same room as this individual while “[h]e was boasting how he was the one who cut off the old man’s hands and ears” at a later date at her friend’s house.³⁷² Or how, similarly, she came to be in another situation to ask for a ride home from this same man after alleging to see additionally at the Pionirska incident³⁷³ and at the Bikavac fire and, again, in a position to hear him ‘boast’ about what he had done.³⁷⁴

294. VG-115 is a wholly unreliable witness because it is highly unlikely she actually witnessed any alleged incident and was merely seeking to interject herself into the proceedings of those Indicted of war crimes from her own home town. The strongest evidence has been not only the completely inaccurate details she has provided and the implausibility that she witnessed this many horrifying events while not coming to any harm, but mostly that it was she herself who contacted the Tribunal after the filing and release of

³⁷⁰ T.742/1-5.

³⁷¹ 1D18.

³⁷² *Id.*

³⁷³ T.684/6-7.

³⁷⁴ T.743/24-744/10.

MR. ALARID: “So what you're saying here today is that only for the three days following the Bikavac fire you didn't have access to a car, therefore, you had to ask the mass-murderer for a ride home?”

A. Not to take me home, for me to sit in the car and to have him take me home. When he came to my office to get his fuel, I asked him, Can you give me a ride to my house, I have something to attend to? And that was all. This was not in order for me to have any dealings with him or to talk to him or achieve anything with him. What I wanted to do was see to it that my house would not be pillaged and the furniture taken away every which way as was daily practice.....”, T.714/7-18 (private session).

this Indictment and provided details that could have been easily gleaned without any actual firsthand knowledge, as Dr. George Hough submitted in a report of her statements.³⁷⁵ As she stated herself, “I knew that one day I would either be taking the witness-stand or writing a book about these things”³⁷⁶ seemingly planning some notoriety of these events.

295. As her allegations are completely inconsistent and incredible, no weight should be accorded to her testimony on this count, the Bikavac count (discussed *infra*), or any other matter in relation to this case in order to maintain the integrity of these proceedings.

iv. Huso Kurspahić

296. As discussed above, as a 92*ter* witness, he had opportunity to review and change or confirm his statement, which he confirmed in open court on 1 September 2008.³⁷⁷ At the same time, he confirmed his testimony in the *Vasiljević* case.³⁷⁸ In conjunction with his testimony, the Prosecution adduced a list of some of the people believed to have been killed in a Pionirska fire.³⁷⁹ During his initial testimony, Mr. Kurspahić had ample opportunity to make any changes as the document was brought up and he changed the status of his father, Hasib Kurspahić, removing him from the list as he later found him to be alive.³⁸⁰ He is later given another opportunity to make any necessary changes in the following exchange:

Q. Now, apart from your father, have you ever seen or heard from any of these persons on the corrected list since the 14th of June, 1992?

A. Yes. May I use this, because I have this list in front of me?

Q. Could I just -- maybe I didn't make myself understood. Could I just ask you the question again. Putting your father aside, his name is on the list currently, have you seen or heard from any of those other persons on the list since 1992?

*A. No. I do apologise. I didn't understand correctly.*³⁸¹

297. Huso Kurspahić testified that his father, Hasib Kurspahić, now deceased, told him how he escaped when an explosion blew open the door next to which he was standing and threw him outside. He says his father named Milan Lukić, Sredoje Lukić and Mitar

³⁷⁵ 1D204.

³⁷⁶ T.722/14-16.

³⁷⁷ T.872/14-873/4; P36.

³⁷⁸ T.873/11-25.

³⁷⁹ P39.

³⁸⁰ T.874/16-875/2.

³⁸¹ T.877/19-878/2.

Vasiljević as the assailants. However, in a taped interview given by his father, his father does not mention either Milan or Sredoje, only referring to Mitar.³⁸²

298. When asked how many times his father had told him who the perpetrators were, he answered:

*“Look, in a casual conversation you know how it is in families when someone comes who hasn't seen him for a long time, you start these debates within a family circle. Five or six times. Please don't ask me that. This is irrelevant. I'm here in front of you to tell you everything. Please do not tire me with some minor questions that are not relevant for these proceedings.”*³⁸³

299. Huso Kurspahić, a police officer, also claims he made reports of the Pionirska and Bikavac fires but burned them at some point in 1994, including documents related to VG-13 and Zehra Turjaćanin.³⁸⁴

300. Later in the trial, Mr. Huso Kurspahić was re-called as a Chambers witness, upon information that several people on this list may not have died in a Pionirska fire.

v. Lack of Adequate Proof of Death for Pionirska

301. Apart from some minor “corrections” by Huso Kurspahić,³⁸⁵ none of the Prosecution witnesses offered any modifications or comments or objection to the proffered list of victims.

302. In addition, Ewa Tabeau of the Prosecution’s office prepared an exhibit purporting to establish proof of death for the Pionirska Victims, Ex. P119.

303. A Defense request to the authorities in Višegrad for further information on the purported victims listed in Schedule A, directed to the MUP of Višegrad, was responded to with the JMBG (unique identifier number), date of birth, father’s name and last known address of all the persons who could be confirmed as scheduled victims.³⁸⁶ The responses from the authorities were a shocking eye-opener, as they revealed that a) not all the scheduled victims could be linked to actual persons who had been registered as ever living in Višegrad ;

³⁸² T.898/23-899/1.

³⁸³ T.928/9-14.

³⁸⁴ T.927/4-7.

³⁸⁵ T.871/1-912/4.

³⁸⁶ 1D221,1D223.

and b) some of the persons listed as murder victims in schedule A had filed change of address forms and were living in other areas of Bosnia.

304. Two witnesses from the Višegrad Police testified under subpoena as to the manner in which the information was collected. Zoran Uscumlic and Stoja Vujcic.

305. Zoran Uscumlic testified that within the Police Station at Višegrad, archives and files exist for all IDs issued in the past.³⁸⁷ He likewise confirmed that the JMBG is the unique citizen identifier number issued to every citizen at their birth and following them throughout life.³⁸⁸

306. He likewise described the circumstances following receipt of the request for assistance from the Defense, and the steps taken to comply with that request and review the official records to locate information as to the existence of persons matching the list of scheduled victims from the Prosecution's indictment.³⁸⁹ He confirmed that not all names could be matched to persons registered, and affirmed the authenticity of the Defense exhibit.³⁹⁰

307. Stoja Vujcic testified that she was employed in the Višegrad Police Station, where she worked on the issuance of ID cards, JMBG registration and CIPS system.³⁹¹ She testified since 1980 the law required all citizens to have a JMBG number, usually issued at birth.³⁹²

308. The witness described the searches that she performed to locate the original files for persons and link them to named victims in the indictment, pursuant to the official request issued by the defense, and the drafting of the response.³⁹³

309. Given the nature of the JMBG and the files that were researched by the Višegrad police, the failure to locate persons named in the Schedule A cast serious doubt as to the existence of said persons at all.

³⁸⁷ T.6602/7-6603/4.

³⁸⁸ T.6604/20-6605/1.

³⁸⁹ T.6605/13-6608/1.

³⁹⁰ 1D221;T.6607/8-6608/13.

³⁹¹ T6669/5-16.

³⁹² T.6670/1-22.

³⁹³ T.6672/23-6676/8.

310. The Defense embarked on its own investigations into the list of victims and was shocked to find a multitude of indications that multiple murder victims were still alive. After filing various notices of dead persons still alive, the Defense received an amended P119 from Ewa Tabeau, as well as a proofing statement from Huso Kurspahić identifying major amendments and corrections to the list of victims, including identifying persons known to Huso Kurspahić to be alive, who had been presented as dead by the Prosecution witnesses. The Defense was able to convince the Trial Chamber to call 2 witnesses on this topic, including one victim from the list of dead persons at Schedule A³⁹⁴, as well as re-calling Huso Kurspahić to explain how persons attested to be dead under oath were in fact “recalled” to be alive at the time precise moment that the Defense began uncovering other live victims.

311. The circumstances of this matter are such that the knowledge and good faith of the Prosecution in this regard must be called into question and scrutinized. The deficiencies of the list of Pionirska victims go towards the heart of the Prosecution’s case, and it is hard to believe that diligent Prosecutors, operating in good faith and with the duty of candor, failed to uncover the serious problems with their list of scheduled victims, until after *ALL* their witnesses had testified and even affirmed the list.

312. On 17 March 2009, the protected Witness CW1 testified in these proceedings, both in open session and private session. CW1 is a scheduled victim of Pionirska Street, who gave her biographical information in private session.³⁹⁵ The witness tendered their passport as well as passports of close family members who were also scheduled victims for the Pionirska Street incident.³⁹⁶ The Prosecution did not challenge the identities of CW1 and her close family members.

313. Those portions of CW1’s testimony relevant to this submission that occur in private session or are the subject of redactions are set forth in Confidential Annex B, attached hereto.

³⁹⁴ CW1.

³⁹⁵ T.5538/9-16.

³⁹⁶ 1D155; 1D156; 1D157.

314. During the course of CW1's testimony, several named victims from the Indictment as to the alleged Pionirska Street House Burning Incident were called into question, as either being duplicates, being alive, dying at another time, or not existing at all.

315. At the close of the testimony of CW1, the Prosecution conceded to the testimony of CW1 as to 3-4 persons that were admitted as having been alive and not having been at Pionirska Street at all, despite being named by Prosecution witnesses and contained in the Indictment's schedule of victims for this alleged crime site.³⁹⁷ The Defense objected pointing out that this was not a complete totality of the evidence offered by this witness.³⁹⁸

316. The Trial Chamber instructed the Defense to set forth any additional submissions. The Defence submitted it is the interests of justice to have a proper record of the proceedings and, in particular, to have a proper record with citations to the transcript of the precise nature of the testimony of CW1 to ascertain whether persons listed as victims in fact ought to be excluded.

317. The effect of the testimony of CW1 went to weaken the testimony of all of those Prosecution witnesses who either mistakenly or untruthfully verified the list of victims. This is particularly true as to VG-18 (see Confidential Annex B).

318. During the course of CW1's testimony, no fewer than 17 alleged victims from the purported Pionirska Street murder count were called into question. A summary of this testimony is as follows:

Identity of Alleged Victim	Testimony Reference	Remarks
5. Hasena LNU	TR. 5561/13-22	CW1 only knows of one person, Hasena Kurspahic, who is alive currently and living in Bosnia.
15. Aner Kurspahic	TR.5564/16-23	(see Confidential Annex A)
23. Hajrija Kurspahic	TR.5565/24-5566/10	Only one CW1 knows is Hajra, who died before the war.
26. Hasan Kurspahic	TR.5566/21-5567/19	(see Confidential Annex A)

³⁹⁷ T.5626/4-5627/2.

³⁹⁸ T.5628/17-5631/8.

27. Hasiba Kurspahic	TR.5568/15-5569/1	(see Confidential Annex A)
28. Hasnija Kurspahic	TR.5569/6-12	CW1 knows no one that age with that name. *Ewa Tabeau's P119 has no JMBG for this person
34. Izeta Kurspahic	TR.5569/25-5570/2	CW1 knows no one by this name. *Ewa Tabeau's P119 has no JMBG for such a person
35. Kada Kurspahic	TR.5570/3-13	Is a duplicate of #67, as it is Kada Sehic's maiden name *Confirmed by Ewa Tabeau's P119
36. Latifa Kurspahic	TR.5570/14-15	(see Confidential Annex A)
37. Lejla Kurspahic	TR. 5570/19-20	(see Confidential Annex A)
38. Maida Kurspahic	TR. 5570/24-5571/10	(see Confidential Annex A)
42. Meva Kurspahic	TR. 5571/22-5572/6	Died in 2003 (see Confidential Annex A)
43. Mina Kurspahic	TR.5572/14-21	CW1 only knows of one by that name, duplicate of #4 Jasmina Delija, maiden name of #4 *Confirmed by Ewa Tabeau's P119
47. Munira Kurspahic	TR.5573/7-9	CW1 Knows no one by that name
55. Saha Kurspahic	TR.5574/9-11	CW1 Knows no one by that name
57. Seila Kurspahic	TR.5574/15-22	(see Confidential Annex A)
66. Haraha Sehic	TR.5576/23-24	CW1 Knows no one by that name *Ewa Tabeau's P119 has no JMBG for such a person existing.

319. Following the testimony of CW1, the Trial Chamber had the opportunity to hear Huso Kurspahic a second time.

320. Mr. Kurspahic testified initially under oath that he was familiar with the Indictment filed against Milan Lukić and the Annex A list of scheduled victims from Pionirska Street.³⁹⁹

³⁹⁹ T.6863/25-6864/4.

He further claimed that he had that list from a previous hearing in the *Vasiljević* case, and that some names had to be corrected, and he did not know where the mistakes came from.⁴⁰⁰

321. Mr. Kurspahić made significant concessions on the list, indicating the persons were erroneously listed twice, alive persons were listed as dead; he claimed the list of 70 names could be cut down to approximately 50. With some of the corrections he specifically indicated that the other Prosecution witnesses, VG-18, VG-78, VG-84, and VG-13 ought to know of these same facts.⁴⁰¹ The Trial Chamber will recall these witnesses made no corrections or significant reductions to the list of victims.

322. It should be recalled that Mr. Kurspahić ended his direct examination conceding that he gave erroneous statements to news journalists at a demonstration staged by Bakira Hašević.⁴⁰²

323. Mr. Kurspahić was confronted with another document from the Authorities of Bosnia, setting forth that some of the named victims from the Pionirska Indictment had in fact recently filed legal proceedings for the return of their property.⁴⁰³ This evidence casts additional doubt as to the veracity of the Prosecution evidence. This confession should affect the Trial Chamber's appraisal of his credibility and veracity.

324. Exhibit P119 both in original form and as modified by the Office of the Prosecution after the Defense raised the possibility that persons named as victims therein were in fact alive, is a document generated by witness Ewa Tabeau and the Prosecution's Demographics Unit.

325. As such, by its very nature it is a self-serving document, generated for the purposes of this trial and generated by the Prosecution to mask the utter lack of any proof of death for the scheduled victims alleged in the Indictment for the murders for which Milan Lukić is being tried. As such the document is misleading and does not rise to the level of evidence necessary to sustain the burden of proof on the Prosecution to prove the death of scheduled victims in the Indictment.

⁴⁰⁰ T.6864/7-14.

⁴⁰¹ T.6887/10-16.

⁴⁰² T.6907/24-6908/9.

⁴⁰³ 1D226.

326. Indeed, the erroneous, misleading, and self-serving P119's own limitations were conceded by Ewa Tabeau during the course of her SECOND testimony before the Trial Chamber. In total, with respect to P119 the lack of evidentiary value or assistance inherent in the document were conceded as she stated:

- a. The clarifications in the OTP report filed after the Defense Notice of dead persons should be read together with the results in the P119⁴⁰⁴;
- b. P119 cannot help establish whether Milan Lukić killed certain persons or not⁴⁰⁵;
- c. Only 69% of stated victims had correlating information in P119 confirmed from the 1991 census for actual persons⁴⁰⁶;
- d. Formal death records for the named victims of Pionirska and Bikavac in various databases resulted in 0 and in one case 9 matches, with only 6 of the 9 being verified⁴⁰⁷;
- e. Due to in several cases there being multiple persons with the same name listed as alternatives, the clarification needed to be consulted and choices need to be made as to which alternative (by the OTP)⁴⁰⁸;
- f. P119 does not contain a demographic study (which of course is her area of expertise), such that P119 is outside her expertise⁴⁰⁹;
- g. The 69% reliability rate of P119 is low⁴¹⁰;
- h. The testimony as to P119 was rushed and was not explanatory of everything⁴¹¹;
- i. P119 does not have margin of error or statistical significance.⁴¹²

327. Accordingly, the foregoing cast reasonable doubt as to the allegations of the Prosecution as to the Pionirska and Bikavac counts of the Indictment.

vi. Complete lack of forensic evidence lending to reasonable doubt

⁴⁰⁴ T.6113/25-6114/1.

⁴⁰⁵ T.6119/14-15.

⁴⁰⁶ T.6119/23-6120/12.

⁴⁰⁷ T.6122/7-13; 6128/18-25.

⁴⁰⁸ T.6126/20-6127/11.

⁴⁰⁹ T.6141/25-6142/5.

⁴¹⁰ T.6142/6-12.

⁴¹¹ T.6161/8-17;6162/5-7.

⁴¹² T.6173/1-8.

328. One facet of the Prosecution's case that deserves a significant amount of attention in regards to Pionirska Counts is the forensic evidence, or lack thereof, and not only what that tells us of the underlying allegations, but also about the good faith or lack thereof of the Prosecution in presenting their case.

329. In this regard it should be recalled that out of a total of 33 witnesses called in the Prosecution case in chief, a total of 8⁴¹³ (24% - about 2 times as much as called for any other count) were called for the Pionirska Counts, and a total of 13⁴¹⁴ (39%) were called for Pionirska and Bikavac. This alone denotes the central importance of these two charged incidents to the Prosecution's theory of the case.

330. It is therefore illogical to expect that the Prosecution did not investigate the allegations diligently and did not know or care what the forensic trace evidence demonstrated as to confirm or disaffirm the allegations of fact witnesses. In a case of this magnitude, the lack of action on the part of the Prosecution in terms of pursuing forensic investigation can only be inferred as being an avoidance or reluctance because it was known that the forensic evidence disproved the Prosecution's case. Respectfully, the Prosecution engaged in the grossest of obstructions of justice and hiding of evidence to effectuate a miscarriage of justice, all so that their crown counts against Milan Lukić would obtain the conviction sought and craved for by the media and propaganda outlets. One must consider that the actions of the Prosecution amount to a violation of the duty of candor of the highest regard, as being intentional or with willful and reckless disregard so as to be sanctionable.

331. In this regard, it ought to be placed on record that when Defense counsel noted the lack of any forensic reports relating to Pionirska (and Bikavac) in the 51 disclosures made⁴¹⁵ by the Prosecution, the Prosecution evaded giving a straightforward response (that there were no such reports in possession of the Prosecution) and danced around a very straightforward request for several weeks. A copy of the initial request and evasive response (from Mr. Steven Cole) is attached hereto as Confidential Annex C.

⁴¹³ VG-115;VG-013;VG-038;VG-018;VG-061;VG-084;VG-078;VG-101.

⁴¹⁴ *Ibid.*, VG-058;VG-114;VG-119;VG-063;VG-035.

⁴¹⁵ As of November 2008.

332. In essence the Prosecution feigned ignorance of what was meant by a forensic report for Pionirska or Bikavac, in particular those referenced by their own witness (Amor Masović). Such a display of gamesmanship and unprofessional behavior on the part of the Prosecution is abhorrent to the legal system and the notion of truth seeking, due process, and/or justice.

333. It should be recalled that Amor Masović, a vaunted Prosecution witness testified that a total of 67 locations within Višegrad Municipality were exhumed, with a total of 311 bodies having been exhumed and processed.⁴¹⁶ Of that forensic evidence of bodily remains, 0% (0 out of 311) and none of the work done by Mr. Masović or others related to any bodily remains linked to the over 140 persons alleged to have perished in the Pionirska or Bikavac house fires.⁴¹⁷ There simply was no forensic evidence obtained or pursued by the Prosecution regarding to the alleged victims of Pionirska or Bikavac.

334. This is critical, given that the Prosecution's own expert witness, Amor Masović confirmed that a possible conclusion to be drawn from this forensic data was that the crimes alleged as to Pionirska and Bikavac in fact did **NOT** occur, and that people reporting the missing and dead were lying.⁴¹⁸ Indeed, given the developments in this case which have cast serious doubts upon the reporting of victims who allegedly perished in these sites, including the testimony of CW1, who was listed as a person who perished in Pionirska and was not in fact in Bosnia nor Višegrad at the time of the alleged incident, the inference that people were lying and the crimes did not occur is more probable than not, rather than merely being possible. As such the principle of *in dubio pro reo* and the law of inferences dictate that the possible conclusion conceded by Amor Masovic be accepted, and Pionirska and Bikavac be dismissed, due to the lack of forensic evidence of dead persons.

335. However, even apart from that analysis, a review of the other forensic evidence establishes serious and reasonable doubt as to the Prosecution's case as to Pionirska, and as set forth herein below, mandates acquittal of Milan Lukić on those counts.

⁴¹⁶ T.3182/24-3183/11;P183;P174.

⁴¹⁷ T.3185/14-3186/4.

⁴¹⁸ *Id.*

336. It again must be stressed that the Prosecution had physical access to the site for many years; indeed a video disclosed by the Prosecution shows that they had a full contingent at the Pionirska site on June of 2001, with photographic equipment and safety personnel present, and yet no forensic or photographic evidence as to the interior of the room where the alleged incident took place was taken or preserved.⁴¹⁹ Interestingly, the Prosecution used fuzzy still shots from this very same video⁴²⁰ with its own witnesses, but avoided using the videotape which showed several things very clearly, including the presence of a shed in the portico area that was no longer present in the present day. According to an experienced fire investigator expert, Benjamin Dimas, this shows that the fire that destroyed the portico happened post-2001.⁴²¹ This is relevant to the proceedings because that portico area and the evidence of fire in that area had been at the center of Prosecution allegations of a fire in 1992.⁴²² The fact that the Prosecution failed to utilize its own video, and presented a theory contradictory to the forensic evidence preserved on their own video for the bulk of the Trial sheds light on the intent and knowledge of the Prosecution, who quite literally would have gotten away with a travesty of justice if not caught by the Defense and the experts, who insisted on viewing the forensic evidence the Prosecution had avoided acknowledging as part of its subterfuge.

337. The Prosecution video also confirms the door present in 2009 and examined by the Defense experts is the same door, in the same condition, and with a latch on it, as in 2001 when the Prosecution went to the site.⁴²³

338. No fewer than four Defense experts examined the Pionirska site and forensic evidence and had the opportunity to affirm or disaffirm whether the postulated fire consumed 70 people in a “funeral pyre.” Two Defense experts have significant, trained fire investigation experience, and another has experience in post-blast exploitation of fire sites.⁴²⁴

339. Martin McCoy, a fireman with the Albuquerque Fire Department, with 13+ years of fire fighting experience and employed as a fire/arson investigator since 2006, has investigated

⁴¹⁹ 1D184.

⁴²⁰ P50; P58.

⁴²¹ T.5945/11-23;5947/3-10.

⁴²² 1D169, 1D184;T.5758/17-5759/13,

⁴²³ T.5947/15-25.

⁴²⁴ Stephen O’Donnell.

50 suspicious fires per year, and was accepted as an expert by the Trial Chamber on 4 March 2009.⁴²⁵

340. Stephen O'Donnell, a former member of the United States Marine Corps and United States Army who was trained and deployed both as a serviceman and as a private contractor overseas by the United States Department of Defense to perform post-explosion site investigation and EOD (explosive ordinance removal).⁴²⁶

341. O'Donnell, as a part of the team of experts authorized for the Defense, visited the Pionirska and Bikavac sites in January 2009 to apply his expertise in analyzing the forensic evidence available to make determinations.⁴²⁷

342. O'Donnell's expert report set forth his specific findings, as to the one metal fragment he found embedded in the wall, and the deterioration of the site and what that means for drawing conclusions as to whether an explosive device was used in the room.⁴²⁸

343. Mr. O'Donnell also testified, based on his expertise on the other forensic evidence in the room as it related to the allegations of a fire being used in the room to kill 70 persons. Mr. O'Donnell made the following observations and conclusions, among others, based upon the forensic evidence that was present:

- a. The darkened wood flooring was not carbonized or subjected to fire, but rather was discolored from wetness.⁴²⁹
- b. None of the wood in/around the door showed evidence of fire damage.⁴³⁰
- c. Blackened appearance of concrete was due to mold, not fire.⁴³¹

344. Mr. McCoy, along with Benjamin Dimas, were the only fire investigation professionals to investigate the site utilizing the type of review that is appropriate to their profession, on behalf of either the Prosecution or Defense. As such, their findings and conclusions are entitled to great weight and deference, particularly as to forensic evidence

⁴²⁵ 1D161;T5665/11-18;5669/13-5670/4.

⁴²⁶ 1D133,1D134;T5393/19-5408/20;T.5409/22-5410/12.

⁴²⁷ T.5423/19-5424/8;1D136.

⁴²⁸ 1D135.

⁴²⁹ T.5440/7-19;1D145.

⁴³⁰ T.5484/17-22.

⁴³¹ T.5508/5-16.

that they determined excluded the plausibility of the Prosecution's allegations as to a fully involved fire killing 70 persons at the Pionirska location. The reports authored by these individuals clearly set forth their expert opinions based upon the empirical forensic evidence available at the Pionirksa site, which call into serious question the Prosecution's case as to these counts.⁴³²

345. McCoy described that the method of peer review utilized within his profession whereby two investigators view a site together to reach a joint conclusion, with one investigator acting as the lead.⁴³³ In the instant case, Mr. Dimas was the lead investigator with authority to make determination and decision as to ultimate cause.⁴³⁴

346. The scientific, hands-on review of the Pionirska Street location performed by Mr. McCoy reached the following conclusions, among others, based upon the forensic evidence that was present:

- a. Gathering the scientific data on-scene throughout the room and all surfaces of the room there was no fire of great intensity in the room that fully enveloped the room; there were remnants of a small debris fire in one small part of the room, but also many surfaces untouched by fire, including wood that was pristine.⁴³⁵
- b. The darkened appearance of the wood flooring in the room is because of moisture and possible rotting from the excess moisture in time, and is not evidence of flashover or charring.⁴³⁶
- c. There was not a high-intensity fire that created flashover conditions in this room because of the untouched surfaces of floor timbers.⁴³⁷
- d. The darkened wood at the door frame and the darkened plaster around the door area were the result of mold, and did not show evidence of any exposure to heat, fire, discoloration or charring that would have definitely still been there as irreversible effects had a fire taken place.⁴³⁸

⁴³² McCoy Report still not assigned number, MFI 1D184.

⁴³³ T.5670/8-5671/8.

⁴³⁴ T.5942/8-14.

⁴³⁵ T.5688/2-5;5689/2-13.

⁴³⁶ T.5695/9-16;5697/12-22.

⁴³⁷ T.5698/1-4.

⁴³⁸ T.5698/17-5699/22.

- e. The Photographs utilized by the Prosecution and alleged to be “burnt timber” in the wall were in fact not wood, but the remnants of an electrical juncture box.⁴³⁹
- f. The Pipe Chase or chimney in the room lacked any evidence of a fire or soot that would have had to have been present had there been a fully enveloped fire in the room⁴⁴⁰

347. In summary, as set forth by the report of expert McCoy,⁴⁴¹ the forensic evidence at the Pionirska site disproved the possibility of a fire having enveloped that basement room where it is alleged 70 persons were killed.

348. Benjamin Dimas, a fireman with the Albuquerque Fire Department, with 27 years of fire fighting experience and employed as a fire/arson investigator since July 2002 who has investigated or reviewed hundreds of suspicious fires, was accepted as an expert by the Trial Chamber on 4 March 2009.⁴⁴²

349. The scientific, hands-on review of the Pionirska Street location performed by Mr. Benjamin Dimas reached the following expert conclusions, among others, based upon the forensic evidence that was present:

- a. There was no evidence indicating the results of an air-fuel explosion of the nature postulated by the Prosecution.⁴⁴³
- b. The Dark areas about the doorway were tested with a scratch test and determined to be moisture and mold, not ash or soot resulting from a fire.⁴⁴⁴
- c. Wooden door shims that were discolored were moldy, not burn patterns that would be expected from a fire.⁴⁴⁵
- d. The exterior of the structure and openings did not show signs of a fully enveloped fire having been inside the subject room.⁴⁴⁶

⁴³⁹ T.5702/7-5703/23;1D167,1D168.

⁴⁴⁰ T.5707/9-5709/4.

⁴⁴¹ T.5665/11-18; 1D22-0681.

⁴⁴² T.5932/18-20; see also 1D183.

⁴⁴³ T.5954/16-5955/7.

⁴⁴⁴ T.5955/21-5957/25;1D165,1D187.

⁴⁴⁵ P280,1D188;T.5958/1-5959/7.

⁴⁴⁶ T.5960/3-18.

- e. It would have been impossible to remove all evidence of fire, and searches of the wood and dirt floor revealed no such evidence.⁴⁴⁷
- f. There was evidence of a small fire, feces, and chicken bones indicating someone living in the room and making a small cooking fire, but not rising to the intensity necessary to consume a whole room.⁴⁴⁸
- g. The water seepage and moisture present in the room would act to preserve rather than wash away evidence of fire damage, which could not have been covered up by mold growth.⁴⁴⁹
- h. The Photographs utilized by the Prosecution and alleged to be “burnt timber” in the wall were in fact not wood, but the black moldy remnants of an electrical juncture box.⁴⁵⁰
- i. Had 60+ persons been in the room during a fire, their body mass would have fueled the fire even more, leading to the deposit of forensic signs of fire that simply were not present at the Pionirska house.⁴⁵¹

350. In the cross-examination of these experts, the Prosecution primarily attacked the experience of Mr. McCoy, particularly as to his knowledge of fuel air explosions. However, with Mr. Dimas, who had significant experience in investigating air fuel explosions,⁴⁵² was subjected to a “surprise” by the Prosecution, who had at the 11th hour gone to the Pionirska site with an apparently untrained and previously undisclosed personnel to destructively remove artifacts of evidence and bring them to the Court. It should be noted that all this evidence was accepted by the Defense and tendered after Mr. Dimas utilized the physical evidence to illustrate and demonstrate the application and confirmation of his opinions.

351. Most noteworthy in this set was the darkened floorboard which the Prosecution had thought was burn damage, but which was demonstrated to be water saturated, with water gushing out when pressed.⁴⁵³

⁴⁴⁷ T.5964/13-5966/1.

⁴⁴⁸ T.5969/10-5972/11;5975/5-16.

⁴⁴⁹ T.5972/12-5974/6.

⁴⁵⁰ T.5976/14-5977/9;5977/22-5978/3;1D192,1D193.

⁴⁵¹ T.6098/16-25;6099/1-14.

⁴⁵² T.5954/16-23.

⁴⁵³ 1D184.

352. A loose piece of charred wood imbedded in the wall was said not to have any structural functionality and appeared to be equally likely to have been from a fire set to keep the concrete pour from freezing, as evidence existed the wall had been poured in sections.⁴⁵⁴

353. Another piece of charred wood⁴⁵⁵ was shown to be removed precisely from the back of the portico area that was burned outside⁴⁵⁶. Insofar as this would have been burnt after 2001 it cannot be viewed as supportive of the Prosecution allegations of Pionirska.

354. The initially argued “burnt timber” presented by the Prosecution that the Prosecution then re-labeled a “burnt electrical box” was examined by Mr. Dimas who concluded it was concrete which did not show any signs of being exposed to a fully enveloped fire.⁴⁵⁷

355. It should also be recalled, when reviewing the evidence, that the Prosecution’s main theory with regard to Pionirska was that the room walls were covered, and that the wood in the portico showed evidence of furring strips that had been attached to the walls and had affixed paneling that would have protected the walls from the heat/fire/flames.⁴⁵⁸ In this regard the only trained eyes to visit the site stated that they did not see evidence tending to show the room in question had ever been covered in furring strips.⁴⁵⁹ In any event, after the Prosecution’s 11th hour visit to the site wherein physical evidence was removed and brought to Trial for examination, the alleged “furring strip” relied upon by the Prosecution for its claims was inadvertently brought in and shown to Mr. Dimas, who confirmed what was apparent to the naked eye, that this was pressed wood that had fragmented, not a furring strip attached to the back and the wall.⁴⁶⁰ This critical piece of empirical forensic evidence obtained by the Prosecution finally puts to rest the speculation, and establishes beyond reasonable doubt that the Prosecution’s case and theory as to Pionirska is just plain wrong and unsupported by the evidence.

⁴⁵⁴ T.6079/18-6085/19;1D197,1D198,P305.

⁴⁵⁵ 1D184,A1.

⁴⁵⁶ T.6094/4-6096/4.

⁴⁵⁷ T.6092/5-6093/3;C1.

⁴⁵⁸ T.5498/15-5501/22;P268,P269;T.5784/11-5785/10.

⁴⁵⁹ T.6023/10-11;6025/8-13;6027/10-25;6028/1-3;6029/22-25;6030/1-3;6086/22-25;6087/1-25;6088/1-24;6090/1-25;6091/1-2;6103/20-25.

⁴⁶⁰ 1D184;T.6103/2-25.

356. All told, the cross-examination of the Prosecution demonstrated the dramatic difference that a trained set of eyes and trained senses have over the lay-person in terms of analyzing forensic material to determine if a fire was present or not. This factor is important in considering that a lay person could not “clean” forensic evidence from the Pionirska site. Likewise this factor demonstrates that the visual observations of trained experts must be given precedence over conclusions reached by the untrained or casual observer. With the benefit of 2 trained fire/arson investigators, the Trial Chamber now has conclusive evidence before it of a forensic nature which casts reasonable doubt upon, and refutes/rebutts the Prosecution’s theory as to the Pionirska Counts. As such acquittal is warranted of these counts.

357. There is not only reasonable doubt, but a high degree of doubt as there are simply no answers for what happened to the forensic remains of 140 people in two incidents. While the Prosecution postulated that the bodies were moved and buried in another location, there is no forensic evidence to support that, no record of that being done, and no witnesses who saw the remains removed or who can testify to where they are today. Therefore, this possibility exists only equal to all other possibilities, including that in which neither fire happened at all, a “distinct possibility” noted the Defense police/investigations expert, Mr. Clifford Jenkins.⁴⁶¹ When it is a very real possibility that deaths did not even occur, there is certainly reasonable doubt as to the case which would convict a man of being the murderer.

358. As there is an extreme lack of forensic evidence and proof of death to prove the events of 14 June 1992, the charges must be fail on these counts. Furthermore, the identification evidence cannot prove beyond reasonable doubt that Milan Lukić was present or involved in any such acts, in particular because strong doubt is invoked when Mitar Vasiljević is identified side-by-side with Milan Lukić and it is not possible for Mitar Vasiljević to have been there in the later evening hours. Therefore, for the reasons set forth above, the Prosecution has failed to meet its burden of establishing beyond reasonable doubt that the Accused is guilty of this crime and he must be acquitted of said same.

⁴⁶¹ T.6577/15-17.

E. THE PROSECUTION HAS FAILED TO ESTABLISH THE LIABILITY OF MILAN LUKIĆ FOR THE ALLEGATIONS OF COUNTS 13-17 RELATING TO THE BIKAVAC FIRE

i. The Only alleged survivor, Zehra Turjaćanin, is not a credible witness

359. Zehra Turjaćanin is the epicenter of the horrible fire allegations known as Bikavac. In 1992, Zehra Turjaćanin was a young woman trapped in an unwinnable situation, and to a certain degree, remains so entrenched to this very day. Regardless to which theory one might gravitate, what side you're on, Zehra Turjaćanin is a tragic figure embroiled within a controversy that is the trap of her existence. In 1992, Ms. Turjaćanin was a young 30-year-old woman scarred for life by the Bosnian war. Ultimately she emerged burned and scarred to the very depths of her soul, having renounced her homeland and her native tongue, a result of the trauma she endured there.

360. At the outset of the Zehra Turjaćanin testimony, the OTP did little to open the door regarding her background in the community beyond where she was born and how old she was during the relevant time period. The OTP almost immediately moved from pseudonym sheet to her locale in Bikavac and June 1992.

361. The normal modus operandi of the OTP is to garner statements over the lifetime of the investigation ultimately interviewing and creating a statement for use during 92 *bis* proceedings. Amazingly Zehra Turjaćanin never created or signed a sworn statement between June of 1992 and her testimony before the Tribunal in The Hague. Instead, Ms. Turjaćanin enjoyed a sort of celebrity wherein she was interviewed by a steady stream of reporters and journalists and consistently visited and cared for by her countrymen and well-wishers. Ms. Turjaćanin became a symbol of the Bosnian war crime victim through her self-reporting of an alleged burning and mutilation in a house fire of her, her family, and approximately 70 of her neighbors and countrymen.

362. Originally, when Ms. Turjaćanin came forward with her terrific account of Milan Lukić, Mitar Vasiljević, and Sredoje Lukić, she described a band of men who terrorized her and her neighbors in Bikavac by herding them into a walled-in and boarded-up house, nearly in the center of the neighborhood, and setting it on fire. Men, women, children, and the elderly burned alive while Zehra Turjaćanin alone survived to carry her story of the atrocities

to the world. Allegedly, Ms. Turjacaanin made a horrific, heroic, and painful journey out of Višegrad away from the atrocities.

363. Her tales would shift slightly telling to telling, from reporter to reporter, or from journalist to journalist but consistently she recounted the tale of callous indifference to lives of the ordinary citizens of Višegrad with perpetrators motivated only by bloodlust. But in all accounts there remained serious problems with her stories, that simply being her inability to give significant details outside outline quality. Furthermore, her inability to name more than a dozen persons in her group of victims is counter intuitive. All-in-all, the entire condition lacks continuity and facts that follow logical inferences and some details that border on fantastic.

364. In her direct exam, Ms. Turjaćanin almost immediately began a description of her home in the Bikavac neighborhood June 1992, describing a three-story home in the Bikavac hillside neighborhood overlooking the Drina River in the town of Višegrad.⁴⁶² Her testimony then jumps to a description of hearing executions on the new bridge over the Drina from her balcony in Bikavac every night.⁴⁶³ Then, without further ado, the OTP immediately jumps to asking her if she knew Milan Lukić before the war.

365. Before the analysis is into the accusations against an identification of Milan Lukić, it cannot be downplayed that Ms. Turjaćanin initially accused, with zealous abandon, local waiter and known alcoholic Mitar Vasiljević as being present and participating equally, culpable for her injuries of 27 June 1992.⁴⁶⁴ Given the fact that Mitar Vasiljević proved to a certainty of judicial finding that he was approximately 2 weeks in the hospital with a severe compound leg fracture could not have been present in Bikavac on 27 June 1992, all charges related to Bikavac's and the end of June were dismissed on a quiet motion by the Office of the Prosecutor. The fact that Ms. Zehra Turjaćanin proclaimed to be so certain about Mitar Vasiljević being present 27 June 1992 at the house burning in the Bikavac neighborhood makes her an outright liar or suffering delusions of grandeur. Accordingly, Defence expert

⁴⁶² T.2290/13,2291/7.

⁴⁶³ T.2290/24-2291/3.

⁴⁶⁴ 2D38.

Dr. George Hough specifically recommended that Ms. Turjaćanin be evaluated by psychiatric or psychological professionals given her fantastic claims and accusations.⁴⁶⁵

366. Regarding her apparent familiarity with Milan Lukić, Zehra Turjcanin declares that she knew it Milan Lukić during secondary school being schoolmates, claiming to have been in her fourth year when Milan Lukić was in his first year.⁴⁶⁶ This is immediately not logical, considering Ms. Turjaćanin was born with a six-year age difference to Milan Lukić and her brother Đzevad. Then she claims that her brother was direct schoolmates with Milan Lukić sharing his classroom table.⁴⁶⁷ Further, Mr. Turjaćanin goes on to say that she would smoke cigarettes with Milan Lukić between classes at least once a week.⁴⁶⁸ Then without further ado or details, Ms. Turjaćanin's testimony leaps to June 1992.

367. Leading the witness, the OTP prompts Ms. Turjaćanin to describe an incident some time in June 1992 wherein soldiers arrived from everywhere shooting as they laid on the ground.⁴⁶⁹ The OTP examination moves immediately to confirmation of the fact that her brother Dzevad was hiding in a basement behind a block wall.⁴⁷⁰ Then, the OTP elicits testimony regarding seeing Milan Lukić in June of 1992 but on an unknown date, wherein the person she knew to be Milan Lukić himself appeared at her neighbor's house where the ladies were having coffee, only to tell them not to worry, that he would protect them.⁴⁷¹ At this chance meeting, sometime in June 1992, Ms. Turjaćanin claims she was less than a meter away and claims to immediately recognize Milan Lukić.⁴⁷² However, Ms. Turjaćanin fails to offer any real details about this encounter, the persons she is with, or any distinguishing characteristics regarding a person she claims is Milan Lukić.

368. Otherwise, Ms. Turjaćanin goes on to claim that this Milan Lukić again bumped into her at her place of employment where she is a seamstress and again on another non-descript day in June 1992, but where there was good lighting, so much so, she could describe that this Milan Lukić was dressed in a black suit with a black coat, however atypical or illogical that

⁴⁶⁵ 1D205.

⁴⁶⁶ T.2291/8-24.

⁴⁶⁷ T.2292/1-25.

⁴⁶⁸ T.2293/1-11.

⁴⁶⁹ T.2293/12-22.

⁴⁷⁰ T.2293/25,2294/1-18.

⁴⁷¹ T.229419-25,22951-25.

⁴⁷² T.2297/1-13.

might sound.⁴⁷³ Then, with no real continuity or flow, Ms. Turjaćanin describes that her sister, Đzehva, apparently had a conversation with Milan Lukić at the old Bridge on the Drina, again on some nondescript day in June, asking for their brother Đzevad by name.⁴⁷⁴

369. Apparently feeling they made their point with the previous examination, the OTP leapfrogs to the end of June 1992, wherein they lead her to describe an apparent unindicted homicide by burning a gentleman named Enver Subasić.⁴⁷⁵ Ms. Turjaćanin recounts how she supposedly personally witnessed his death by fire while standing less than 10 meters from her home in Bikavac.⁴⁷⁶ She then goes on to say that she also saw another man die by fire being set ablaze after being doused.⁴⁷⁷ At this point, it appears that Ms. Turjaćanin is obsessed with persons being set on fire. This is certainly illustrated in her early interviews and accounts wherein she had broken up in her mind the Pionirska story into three separate events and fires with 60+ people perishing in each fabricated event.⁴⁷⁸

370. Next, the OTP leads to a 27 June 1992 allegations by Ms. Turjaćanin and the alleged house fire and mass murder in the center of that the Bikavac neighborhood.⁴⁷⁹

371. During her testimony, Ms. Turjaćanin indicates that she was at home with a large number of her family members present on 27 June 1992.⁴⁸⁰ Specifically she names her two sisters, her mother, her sister-in-law, as well as their children, and a non-descript woman and her daughter from Rujiste.⁴⁸¹ Crucial is this point as Ms. Turjaćanin is committing perjury because the person she names as her sister-in-law, Sada, has now been shown to be alive and well.⁴⁸²

372. On the issue of other witnesses who perhaps had mistaken identifications of Milan Lukić, it should be noted that Ms. Turjaćanin testified as to a friend/colleague with a very

⁴⁷³ T.2297/22-25;2298/1-25.

⁴⁷⁴ T.2298/25,2299/1-25.

⁴⁷⁵ T.2300/8-25.

⁴⁷⁶ *Id.*, T.2301/1-19.

⁴⁷⁷ *Id.*

⁴⁷⁸ T.3326/14-3330/6; 1D83.

⁴⁷⁹ T.2301/20-25;2302.

⁴⁸⁰ T.2307/11-2316/19.

⁴⁸¹ T.2301/20-2307/20.

⁴⁸² T.2304/20-2305/3 cf. 1D221, 1D233.

similar name, Milan Lucic.⁴⁸³ Bizarrely, Ms. Turjaćanin explains how a colleague of hers from work, also named Milan Lucic, chose to visit her in Bikavac this 27 June 1992.⁴⁸⁴ She describes this new Lucic is a good man, warning her that bad things are going to happen and asking her why she did not left yet, actually crying with her as he spoke.⁴⁸⁵ Then, a short time later, a group of cars came into the Bikavac neighborhood playing loud Serbian music and thereafter began knocking on doors within the neighborhood.⁴⁸⁶ Thereafter, Ms. Turjaćanin describes a knock at her door and a request of her and her family to come outside, which they did.⁴⁸⁷ Also, when asked by the Prosecutor if the named people in her home came out, she stated they did, but she qualified that her brother Đzevad remained on the ground floor in hiding with his cousin.⁴⁸⁸ When Ms. Turjaćanin and her family were brought outside their homes, she indicates with certainty that people came out of the other houses as well.⁴⁸⁹ This is an important fact because it is illogical that the purported witnesses in the neighborhood remained exempt from this group of persons who were allegedly forced into the house in Bikavac and burned alive.

373. It is at this juncture that she describes the apparent arrival of Milan Lukić with his cousin was also named Lukić, a former police officer.⁴⁹⁰ She claims to see Milan Lukić on the path between two houses, wearing a nondescript military uniform.⁴⁹¹ She immediately describes being led away approximately 100m to the alleged home of Meho Aljic.⁴⁹²

374. Ms. Turjaćanin then claims to have been the very last person to be placed in the home. She goes on to describe a large room with lots of people all sitting against the wall in the house with two large rooms connected.⁴⁹³ She claims to have entered through a large glass door with two windows of glass.⁴⁹⁴ Ms. Turjaćanin then claims that the soldiers first threw rocks at the house to break the windows, then threw grenades, then shot at the walls,

⁴⁸³ T.2343/16-3344/13.

⁴⁸⁴ T.2306/13-17.

⁴⁸⁵ T.23071-15.

⁴⁸⁶ T.2308/1-25.

⁴⁸⁷ T.2308/13-18.

⁴⁸⁸ *Id.*

⁴⁸⁹ T.2308/13-2309/8.

⁴⁹⁰ T.2309/17-25.

⁴⁹¹ *Id.*

⁴⁹² T.2311/15-25,2312/1-2.

⁴⁹³ T.2312.

⁴⁹⁴ T.2313/1-15.

and after that set fire.⁴⁹⁵ Ms. Turjaćanin recalls these details without any regard for logic. For example, if the windows were all boarded up or covered with wardrobes, what good were the rocks or grenades. Assuming grenades, where is the vivid description of the chaos, carnage, and confusion that would result from several live grenades being thrown in to a large room full of people. If gunfire was levied to the walls, why were not people injured, dying and bleeding in advance of the setting of the fire.

375. Speaking of the alleged setting of the fire in Bikavac, Ms. Turjaćanin gives an incredible account of the story or fire through a previously unheard-of or unknown accelerant, namely an unidentified white powder pumped into the room by unspecified means, as stated in her early reports and statements.⁴⁹⁶ After a relatively dispassionate account of the burning of dozens of people, Ms. Turjaćanin claims to have been the lone person to escape to a small opening at the door where she had entered.⁴⁹⁷ At this point the story surpasses believability. Supposedly, Ms. Turjaćanin gets outside and claims all of her assailants were in close proximity.⁴⁹⁸ Then, ridiculously, she describes these murderous individuals as merely telling her to stop but doing nothing about it.⁴⁹⁹ Instead, the soldiers just laid on the grass making no attempt to catch or kill her.⁵⁰⁰

376. Then, Ms. Turjaćanin claims to have returned hours later in the night to warn the people of Bikavac to leave.⁵⁰¹ She claims her hands were burnt because she touched the doors which were hot from the fire, but given the fact the door is metal doesn't explain the burns to the back of her arms.

377. In many of her statements as well as her direct testimony, Ms. Turjaćanin recounts her visit to the command of the Serbian army wherein she apparently asked soldiers to shoot her, but they did not shoot her, and afterwards someone invited a doctor to treat her.⁵⁰² Ms. Turjaćanin knew this doctor but could not recall his name during direct exam. We know that

⁴⁹⁵ T.2315/6-13.

⁴⁹⁶ 2D38.

⁴⁹⁷ T.2316-2317.

⁴⁹⁸ T.2317.

⁴⁹⁹ *Id.*

⁵⁰⁰ *Id.*

⁵⁰¹ T.2332/16-25.

⁵⁰² T.2335/1-10.

this doctor was actually named Rašo Vasiljević who treated her in the early summer of 1992, the same doctor who testified to treating Mitar Vasiljević.

378. It should be noted that, even with the misgiving and faults of the in-court identification process (discussed elsewhere in this submission), Zehra Turjaćanin, when asked if she recognized anyone seated in the court room, indicated that she did not.⁵⁰³ Although it is not meant to mean that a positive identification in court is to be relied upon by the Chamber, a lack of identification does have some bearing and weight on the court considering Ms. Turjaćanin's testimony and the relevant jurisprudence.⁵⁰⁴

379. Likewise, Ms. Turjaćanin's description of her injuries, namely third-degree burns and injuries to her ears and hands⁵⁰⁵ are relevant, given the testimony of Ms. Anka Vasiljević, and also the statements of Ms. Turjaćanin in her interview, that in fact her first story she reported to Dr. Vasiljević was that the injuries resulted when she caught her hair on fire and tried to pat it out. It is for the Trial Chamber to consider whether these injuries are consistent with being inside the human pyre inferno she described in which 70 persons succumbed, or if her prior story about lighting her hair on fire whilst lighting a cigarette is more logical.

380. In this regard, we have evidence from several sources that Zehra indeed smoked, even after her burn injuries were sustained and she required assistance to light the cigarette.⁵⁰⁶ With such a predisposition towards smoking, it is a reasonable inference that the original story of catching her hair on fire while lighting a cigarette is indeed logical and truthful.

381. Zehra interestingly testified that there was a lot of talk amongst the people in Višegrad that Milan Lukić had returned to town and started his mischief, but her memory was not immediately refreshed that she knew this Milan Lukić.⁵⁰⁷ This is inconsistent with her testimony that she knew Milan Lukić from school. Likewise inconsistent, is her change in testimony that she in fact did NOT smoke with Milan Lukić or in his company while in

⁵⁰³ T.2342/1-10.

⁵⁰⁴ See *infra*.

⁵⁰⁵ T.2342/11-14.

⁵⁰⁶ T.2414/8-2416/2.(VG119); 2293/3-4, 2307/16-22 (Zehra Turjacanin).

⁵⁰⁷ T.2353/12-21.

school.⁵⁰⁸ One has to question why this key portion of her basis for identifying Milan Lukić keeps changing. Ms. Turjaćanin would like to point to her brother Đzevad as the source of her knowledge of Milan Lukić⁵⁰⁹, but as we saw from his sworn statement he disavows such a thing.

382. A cursory, much less detailed review of the sworn testimony of Đzevad Turjaćanin, further demonstrates serious doubt as to the testimony of his sister, Zehra Turjaćanin, on some critical points of the Prosecution's case.

383. As a starting point, it should be recalled that Zehra Turjaćanin gave very explicit evidence, subject to only one interpretation, as to her prior knowledge of Milan Lukić, prior to the war.⁵¹⁰

384. This sworn testimony unequivocally, and in great detail, claims knowledge of Milan Lukić and going to school with Milan Lukić, and infers that Milan Lukić, Zehra Turjaćanin, and her brother Dzevad went to school together. However, we have the certification from the school officials as to the dates of attendance for Zehra⁵¹¹, as well as for Milan.⁵¹² A review of these demonstrates that Zehra cannot be telling the truth. When one looks at Đzevad's sworn statements to the Office of the Prosecutor, we see that he too disputes and contradicts Zehra's claim, very unequivocally when he states: **"I know that Zehra did not know Milan Lukić before the war. There was never a time when Zehra and I were together and saw Milan Lukić."**⁵¹³ There simply is no other way to interpret this evidence or draw inferences from it other than to conclude that Zehra Turjaćanin's testimony on this account is false and untrue.

385. This conclusion is supported by something else her brother, Đzevad, has to say: "I did not question Zehra as to how she knew it was Milan Lukić and his group that had burned the house."⁵¹⁴ This certainly infers that Đzevad has some doubt himself as to how it is that Zehra Turjaćanin can identify a Milan Lukić whom she has no way of knowing. This is very

⁵⁰⁸ T.2354/20-22.

⁵⁰⁹ T.2354/18-19.

⁵¹⁰ T.2291/8-2293/11.

⁵¹¹ 1D82.

⁵¹² 1D105.

⁵¹³ 1D84, para. 4.

⁵¹⁴ *Id.*, para. 9.

telling and it casts a shadow of doubt upon the veracity and credibility of Zehra Turjaćanin's testimony against Milan Lukić.

386. It must also be stressed that Dzevad's accounting of how he left his hiding place and why is also in contradiction to the sworn testimony that Zehra has given in this trial. According to Dzevad there was no fire that caused him to leave, rather, he claims that he and his cousin made a decision to leave on the 26th of June.⁵¹⁵ Dzevad further states his understanding that this was the same night as the fire, but admits they neither saw nor heard anything of the fire.⁵¹⁶ If indeed there had been a fire of the nature described, within close proximity of the Turjaćanin home, it would be highly unlikely that Dzevad would not have seen or heard it. However, when one recalls Zehra's claim that only AFTER the fire did she tell a relative to go dig out Dzevad from hiding,⁵¹⁷ we see that her story simply does not match up with Dzevad. One has to wonder why the Prosecution went through so much of a struggle to prevent contact between the Defense and Dzevad. Why the statements of Dzevad were only identified as being his, disclosed under a pseudonym, late in the proceedings? Why Milan Lukić's telephonic contact with the outside world was banned by the Prosecution after he located Dzevad Turjaćanin? Why the Prosecution refused to give contact info for this witness, and why the efforts to call Dzevad as a Defense witness were obstructed and rebuffed at every turn?

387. Clearly the Prosecution knows that Dzevad would not and cannot support his sister's story. That inference alone should be enough to discount Ms. Turjaćanin, due to the reasonable doubt created.

388. However, in her own testimony there are several other incredible aspects of her testimony, one being her account that at night from her home's balcony she could not only SEE the bodies of men being dropped off the new bridge (2km away) but that she could hear the bodies hitting the water;⁵¹⁸ an implausible suggestion for the naked ear given the distance and terrain.

⁵¹⁵ 1D86, p.2.

⁵¹⁶ 1D84, para. 8.

⁵¹⁷ T.3331/12-19.

⁵¹⁸ T.2373/23-2375/15;1D55.

389. Another factor which, has yet to be fully explained, but which must weigh upon the consideration of this witness' testimony, is the fact she failed to return from a pause in the questioning, and in the middle of cross-examination apparently claimed to be unable to testify for health reasons, and the examination was suspended for quite some time.⁵¹⁹ In regards to her motives for this – it has to be taken into account that the witness asked to be given a copy of the aerial photo she had been questioned about just prior to leaving, in order to review it.

390. Upon the witness' return to testify, exactly over one month later, the cross-examination resumed. Ms. Turjaćanin could not explain, to any satisfactory level, the reason why she had interrupted her prior testimony, or what medical condition had prevented her from testifying.⁵²⁰ It is inexplicable and still unanswered, given that immediately after the witness conceded that she simply did not want to come back to testify, both the Prosecution and President Robinson acted to shut down Defense counsel's questioning on this score.⁵²¹ The Defense still has not been given any reason or information as to why this witness left in the middle of cross-examination, and why and upon what information it was condoned or permitted by the Trial Chamber. Respectfully, the interests of justice and the truth seeking functions of this Tribunal, let alone the rights of the Accused, have been severely and without explanation infringed upon and curtailed in this matter so that were the Chamber to base any conclusions of guilt upon Ms. Turjaćanin's testimony, they would be subject to the taint and appearance of impropriety that has resulted in this regard.

391. The foregoing is particularly reinforced when one takes into account that shortly thereafter President Robinson refused to allow cross-examination of the witness on her medical treatment, stating:

*“JUDGE ROBINSON: Be Quiet. Be Quiet, Mr. Alarid. It is not a proper use of the court's time to cross-examine a witness for the purpose of preparing your case.”*⁵²²

392. In cross-examination, credible evidence was led, including a certificate from the custodian of records of the school attended by Ms. Turjaćanin, showing the dates that she attended said school.⁵²³ The records, when compared with the totality of the evidence,

⁵¹⁹ T.2379/2380/4.

⁵²⁰ T.3311/8-3316/1.

⁵²¹ T.3314/21-3316/1.

⁵²² T.3321/5-7.

⁵²³ T.3323/23-3325/20.

demonstrate that Ms. Turjaćanin could not and did not attend school during the time period that Milan Lukić attended that school. In this regard, it should be noted that the Prosecution was offered the original certificate from the school, for its review, and declined to review the same. A taped audio record of that meeting exists. They cannot now raise any objection based upon not having had the original to review; respectfully, they have waived that objection. If a witness goes to the lengths of lying about attending school with the Accused, one seriously has to consider the other lengths of perjury the witness is willing to explore.

393. The credibility of this witness, already shattered as set forth above, did not improve. She incredibly claimed to be able to see the fire and hear screams of humans perishing in the Pionirska street alleged incident, all the way in Bikavac.⁵²⁴ The bounds of human reason and logic cannot be stretched that far, and surely such a witness cannot be the basis, the SOLE basis for asserting such serious liability

394. Zehra could not account for or explain away the discrepancies in her brother Dzevad's statements (particularly his account that he left Višegrad the day before the alleged fire), as discussed elsewhere in this brief.

395. It is critical to note that despite the fact that P66 (the transcript of her interview) sets forth precisely that she had claimed to have been burned on a gas cylinder attempting to light a cigarette, when first talking to a Serb doctor, at trial she vehemently denied ever saying that.⁵²⁵

396. The witness continued to deny having said that and vehemently attacked P66, the transcript of her interview, even upon cross-examination by the co-Accused's Counsel.⁵²⁶ She even stated "[a] while ago your learned friend placed on the screen for my benefit a picture or a document stating that I suffer from epilepsy. I never said that."⁵²⁷ Her composure seemed to change, and she required leave of the court room, deeply upset, when co-Accused's Counsel began playing her own words, in the videotape correlating to her interview, as memorialized by P66.⁵²⁸ Certainly, a reasonable inference is that she realized

⁵²⁴ T.3327/22-3329/2.

⁵²⁵ T.3342/25-3345/2.

⁵²⁶ T.3354/24-3355/6.

⁵²⁷ T.3354/25-3355/3.

⁵²⁸ T.3355/16-24.

that she was about to be confronted with precisely those words she wished to deny saying, and that caused her sudden and urgent discomfort. At this point her testimony was interrupted and was not resumed until the next day, at which time the Prosecution indicated that it would not object to the video⁵²⁹ being introduced, but had reached an agreement (with the Counsel of the co-Accused) so as not to confront the witness with the video.⁵³⁰ Was the Prosecution afraid of the impeachment of his star witness for Bikavac?

397. From an investigator's perspective, Defense expert, Mr. Cliff Jenkins, states that the gas stove theory is "a more likely scenario than crawling through that window."

398. In examining a similar door to the one identified by Ms. Turjaćanin as the one she escaped through,⁵³¹ the close up measurements were only about 9 inches or approximately 22.9 centimeters.⁵³² It is up to the Chambers to determine if she could escape from a window that size, but the Defense submits that even her slight frame could not meet such a test. Furthermore he postulates that while crawling out she would be subjected to the fire which would likely cause more injury to the lower half of her body given it would be in the fire for a longer period of time.⁵³³

399. Given the circumstances as laid out above, it is respectfully submitted that no reasonable Trial Chamber could attribute any probative value or weight to testimony offered by Ms. Turjaćanin, and as she is the sole witness to the alleged Incident – with her speaking to all other witnesses who appeared here at the trial, there is no proof beyond a reasonable doubt that the fire at Bikavac even occurred, much less that it happened in this manner, or at the hands of the Accused in this case.

ii. There is no witness in this case of the Bikavac fire who has not spoken to Zehra Turjaćanin

400. In addition to Ms. Turjaćanin, the Prosecution called several other witnesses, including VG-58, VG-119, VG-35, and VG-115 during the case in chief, as alleged witnesses to meet their burden of proof as to the Bikavac Counts.

⁵²⁹ 2D37.

⁵³⁰ T.3358/6-10.

⁵³¹ 1D215.

⁵³² 1D219.

⁵³³ T.6482/22-6484/2.

401. The evidence of these other witnesses, when combined, does not rise to the level of proof beyond a reasonable doubt that is necessary to sustain a conviction on the Bikavac counts.

402. As one criticism of these witnesses, it should be noted that each stated that they discussed the Bikavac incident with Zehra Turjaćanin.⁵³⁴ This necessarily taints their respective testimonies, insofar as they cannot be used as corroborative evidence of Ms. Turjaćanin's testimony.

403. Similarly, it must be taken into account that these additional witnesses, (including a fourth called in rebuttal who could not locate the house but said it was next door to where she and VG-119 stayed)⁵³⁵ although claiming to be corroborative of Ms. Turjaćanin, and claiming to be witnesses of aspects of the Bikavac Counts as retold by Ms. Turjaćanin, all identified a different location for the Meho Alić house that was to have been burnt down,⁵³⁶ different from that identified by Zehra Turjaćanin, the alleged sole survivor.⁵³⁷

404. The foregoing casts great doubt into the veracity of the Prosecution's case on this count.

405. Indeed, in light of the totality of the evidence, it is just as likely that these women, feeling sorry for Zehra Turjaćanin, and being in contact with one another and other refugees, created a story to back up and corroborate Ms. Turjaćanin. However, the common flaw is that they did not know what house to pick, because they never eye witnessed anything, and thus are caught in their untruths by the misidentification. At the end of the day, the only witness is Zehra Turjaćanin, whose flaws, faults, and lack of credibility are discussed elsewhere.

406. Additionally, there are other factors of their testimony relating to Bikavac that denote the questionable credibility of the same or at least raise serious and reasonable doubt as to whether the same can sustain the burden of proof necessary for a conviction.

⁵³⁴ T.2408/1-2409/4(VG-119);T.1607/15-20(VG-58);T.1683/4-1684/5(VG-35).

⁵³⁵ (VG-94)T.7004/10-16.

⁵³⁶ (VG-119)P33,1D56,T.2443/1-2452/16; (VG-58)P99,T.1603/16-1604/17; (VG-35)P101.

⁵³⁷ P133.

407. VG-119's corroborative testimony as to Bikavac takes the following form. She alleges that she and others stayed in a house at Bikavac belonging to Veljan perhaps ten days, but she is certain that they were there until the 27th of June 1992.⁵³⁸ She claims that she is certain about the date because she remembers it was St. Vitus day.⁵³⁹ VG-119 then states that during the evening of that day Milan Lukić and several others came to the house where she was staying, and that one could hear loud music coming from the car that they drove there.⁵⁴⁰ However, VG-119 does state "We didn't know what was happening outside."⁵⁴¹ This admission itself prevents her from being a true eyewitness to anything.

408. It should be recalled at this point that VG-119's identification of Milan Lukić is based solely on her husband's claim that this was Milan Lukić, insofar as she did not know Lukić at all.⁵⁴² Likewise, her testimony seemed to indicate that Lukić had a birthmark on his face.⁵⁴³ VG-94 likewise confirmed that Milan Lukić had a birthmark next to his mouth.⁵⁴⁴ Of importance to note, is that this witness also identified that Mitar Vasiljević was present with Milan Lukić on that night in Bikavac, wearing a black hat.⁵⁴⁵ The Trial Chamber will be reminded of the various evidence, judicial findings from the *Vasiljević* trial, and the instant matter establishing that Mitar Vasiljević was incapacitated and in the hospital with a broken leg and thus could not have been at Bikavac on that date.⁵⁴⁶ The witness's obviously erroneous identification of Mitar Vasiljević raises the serious probability that her identification of Milan Lukić is just as erroneous.

409. VG-119 stated that Milan Lukić, Mitar Vasiljević and these other men returned later that night, around 10pm dripping with sweat and dirty, before leaving.⁵⁴⁷ Then, without anything unusual being noted, around midnight Zehra Turjaćanin is alleged to have knocked on the door, and told the witness and other inhabitants about the fire and that Milan Lukić had

⁵³⁸ T.2403/18-2403/8.

⁵³⁹ T.2403/15-18.

⁵⁴⁰ T.2403/9-2404/8.

⁵⁴¹ T.2404/7.

⁵⁴² T.2392/17-20.

⁵⁴³ T.2430/19-21.

⁵⁴⁴ T.7040/5-23.

⁵⁴⁵ T.2404/19-2405/2.

⁵⁴⁶ See, Decision on Sredoje Lukić Amended Motion for Judicial Notice, 12.11.2008.

⁵⁴⁷ T.2405/6-2407/16.

committed this horrendous act killing 70 persons nearby.⁵⁴⁸ However, VG-119 testified that despite what Ms. Turjaćanin said, they had never had any indication or idea that a fire was going on nearby while in the house, and heard no grenades.⁵⁴⁹ It is illogical that such a massive fire could be occurring with 70 persons locked inside, in the same neighborhood as the witness, and that nothing would be noticed.

410. VG-119 claims that at this time the decision was made by them to leave the house.⁵⁵⁰ She further claims that as they were leaving they arrived at the house behind where they were staying and smoke was rising, it had been burnt down, and there was the stench of human flesh on fire.⁵⁵¹ This account is quite graphic and vivid. Later in cross-examination VG-119 claimed that they walked within 2-3 meters of the Meho Aljić house on their path, and that the roof was burnt down and the smoke could be smelled.⁵⁵² This very detailed and vivid picture was not one that was confirmed by VG-94 who was together with VG-119 at all relevant times.⁵⁵³ VG-94 testified that such a sight, had she seen it, would have been etched in her memory.⁵⁵⁴ However her recounting of the path she and VG-119 took to get away is devoid of any such vivid imagery, and VG-94 cannot even recall that they passed the house in question or saw anything.⁵⁵⁵ As VG-94 testified under oath, had the two of them seen something of the nature described by VG-119, surely she would have remembered it. The fact VG-94 didn't impeaches VG-119 and impacts on her credibility.

411. Another factor that impacts upon the credibility of VG-119 was her changing testimony of where the Aljić house at Bikavac was located, in relation to the one where she stayed. At various times she stated different things:

- House next door⁵⁵⁶
- 3rd or fourth house away⁵⁵⁷
- "Not Far but Not Close"⁵⁵⁸
- House right behind⁵⁵⁹

⁵⁴⁸ T.2408/1-2409/4.

⁵⁴⁹ T.2449/18-2450/10.

⁵⁵⁰ T.2409/16-22.

⁵⁵¹ T.2410/2-22.

⁵⁵² T.2447/25-2448/10.

⁵⁵³ T.7029/16-7030/5.

⁵⁵⁴ T.7032/7-12.

⁵⁵⁵ T.730/18-7032/6.

⁵⁵⁶ 1D57.

⁵⁵⁷ T.2451/19-2452/4.

⁵⁵⁸ T.2452/10-16.

412. Simply put, her testimony in this regard cannot be reconciled. The reason for her reluctance is conceded by her, if the house were next door, she ought to have heard the shooting and other things (which she didn't).⁵⁶⁰ However, VG-94 states that their first knowledge of the incident was when a woman came to their door and said that it was precisely the house next door where everything had happened and women and children had been burnt to death.⁵⁶¹

413. VG-119 conceded that she spent much time with Zehra Turjaćanin in the woods around Okruglo and also when they were both refugees in Medjedja, hearing her story over and over.⁵⁶² This supports the inference that her testimony was influenced by and tailored to support what she heard from Turjaćanin.

414. VG-58 was another witness presented to be corroborative of Turjaćanin on Bikavac. Her testimony was that she was five meters away or perhaps closer to the fire at Bikavac that evening.⁵⁶³ VG-58 testified that there were a lot of women and children at Meho Aljić's house.⁵⁶⁴ She claimed to have seen a red Passat auto show up with Milan Lukić, Sredoje Lukić, and Mitar Vasiljević, who proceeded to force the people into the house.⁵⁶⁵

415. Again, pursuant to the evidence that Mitar Vasiljević was in the Hospital with a broken leg and thus incapable of being at Bikavac at that time,⁵⁶⁶ calls the witnesses' account into question at the very outset.

416. VG-58 claimed that she heard some banging, and the door to the house shut suddenly, and then not 10-20 minutes later the Serbs got back in their car and the house burst into flames.⁵⁶⁷ However then she continues a non-sequitur to state that they put some petrol on it and she heard and saw tracer bullets being shot into the house.⁵⁶⁸ Remarkably and

⁵⁵⁹ T.2410/2-11.

⁵⁶⁰ T.2452/2-4.

⁵⁶¹ T.7004/10-16.

⁵⁶² T.2457/17-2458/15.

⁵⁶³ T.1596/22-1597/4.

⁵⁶⁴ T.1597/5-7.

⁵⁶⁵ T.1597/7-15.

⁵⁶⁶ Decision on Sredoje Lukić Amended Motion for Judicial Notice, 12.11.2008.

⁵⁶⁷ T.1597/15-20.

⁵⁶⁸ T.1597/20-21.

incredibly, the witness is standing in front of the house while this is all going on, including as the people are brought from elsewhere and forced into the house.⁵⁶⁹ This simply does not make sense, if she were that close she would have been noticed by the people doing the forcing or those being forced, and would not have been able to avoid becoming a victim herself.

417. VG-58 claims that as the house was ablaze you could hear screams of the people inside and that it was terrible.⁵⁷⁰ However, as discussed previously, VG-119 and others in nearby houses, such as VG-94, did not hear or note anything during this time. Respectfully, there is no reasonable way for both accounts to be accurate.

418. VG-58 identified the house where all this occurred, and where she saw Zehra Turjaćanin pass.⁵⁷¹ However, that is completely at odds with Zehra Turjaćanin's own account of where the house is and the path she followed.⁵⁷² Respectfully, given VG-58's testimony of being a direct eye-witness, less than 5 meters from the house, it is unfathomable for her to not be able to identify the correct house, unless a part or all of the Prosecution's evidence on this Count is simply fabricated.

419. VG-58's testimony become even more unbelievable when one takes into account that, despite giving prior statements, she did not reveal until April of 2008, her claim that certain of her own family members perished in the Bikavac alleged fire.⁵⁷³ VG-58 offers no explanation for this puzzling fact. Respectfully, this shows her testimony is exaggerated and contrived.

420. VG-58 likewise testified that she recognized Mitar Vasiljević, despite the fact he was wearing a stocking cap that covered all but his eyes, saying that she could recognize him from his eyes alone.⁵⁷⁴ However, in the process of making one of her statements to the Prosecution, she was unable to identify Mitar Vasiljević's picture in a photo lineup.⁵⁷⁵ This seriously impinges on her credibility and the veracity of the testimony she gives.

⁵⁶⁹ T.1600/12-18.

⁵⁷⁰ T.1598/3-6.

⁵⁷¹ p99.

⁵⁷² p133.

⁵⁷³ T.1610/1-12.

⁵⁷⁴ T.1611/11-21.

⁵⁷⁵ 1D41.

421. VG-58's several written statements are also illustrative of another point. Her first statement from 1992 does not mention the Bikavac fire, does not mention that she was an eyewitness to the same, and does not mention Milan Lukić at all.⁵⁷⁶ It should be noted that when she started mentioning Milan Lukić in her statements, she at one time indicated Milan Lukić wore a mask at Bikavac, but she recognized him by his voice.⁵⁷⁷ This of course is in contradiction to her testimony before the Trial Chamber.

422. Many disparities and discrepancies were highlighted from her many statements, which demonstrate that this witness is simply not telling the truth and is changing her testimony at a whim.⁵⁷⁸

423. Remarkably, in private session the witness even claimed that Milan Lukić lived in her neighborhood before the war,⁵⁷⁹ even on the same street.⁵⁸⁰ This is something for which there has never been any corroborating evidence and much evidence to the contrary.

424. VG-58 even refused to answer Judge Robinson's recitation of a question, merely asking to confirm that Milan Lukić's name was not mentioned in her prior written statement. The true intentions and hatred of this witness is seen from her response:

Judge Robinson: *Yes, we understand that. Just answer counsel's question. He's asking whether in the transcript with one, two, three four paragraphs before you do see the name of Milan Lukić.*

The Witness: *[Interpretation] Let me answer you this way: I don't know how he can have the right to defend himself against such crimes, against such evil that was committed.*

Judge Robinson: *You haven't answered my question, which is really quite simple.*

The Witness: *[Interpretation] I have.⁵⁸¹*

425. What is clear from the above exchange, is that VG-58 does not appreciate due process, does not appreciate the purpose of a trial, of justice, of rule of law. For her the purposes, a trial is to say whatever she wants against the man she hates, Milan Lukić, and to

⁵⁷⁶ 1D40.

⁵⁷⁷ 1D43, para. 40.

⁵⁷⁸ T.1613/21-1616/12;1D40,1D41,1D42,1D43

⁵⁷⁹ T.1618/19-1620/10.

⁵⁸⁰ T.1623/22-23.

⁵⁸¹ T.1622/25-1623/8.

deprive him of the right to defend himself. As such, all her testimony must be cast into doubt, and surely no Trial Chamber can rely upon VG-58 in reaching any legally binding conclusions.

426. Lastly, it should be recalled that VG-58 gave the incredible testimony of the “get away” car going in the wrong direction,⁵⁸² which essentially demonstrates her concocted story has no rhyme or reason to it, and is just meant to obtain a conviction and revenge against Milan Lukić for the perceived wrongs that this unfortunate witness has in her head alone.

427. VG-35 is also presented by the Prosecution, albeit primarily for the Koric killing allegations. However VG-35 also presented some testimony in relation to Bikavac, implicating Milan Lukić as being present.

428. We offer significant arguments in relation to the lack of credibility of VG-35 in relation to the Korić Killing. These same credibility issues apply to VG-35 and should be taken into account in relation to her Bikavac testimony.

429. Likewise, VG-115’s lack of credibility is dealt with largely in the Pionirska section of this Brief. Herein, however, the Defence asserts that there are specific matters regarding her Bikavac testimony that add to her being a witness of little to no credibility.

430. In her testimony in this trial, she elaborated on the prior statements she’d given about Bikavac, adding in details and people who were not there prior. In her statements, she described only hearing the fire, however, in her testimony, she now describes seeing it all. In her prior testimony, she stated she heard bursts of fire, but now she claimed to have seen the men “throwing bottles filled with gasoline and hand-grenades”⁵⁸³

431. While she lists more than 12 people being there⁵⁸⁴ taking people into Algic’s house, when asked to name the people going in who she describes as her neighbors and people she knows, she can only name the Turjaćanin family, specifically, Dulka and her daughters Zehra

⁵⁸² T.1605/21-1606/18;P99.

⁵⁸³ T.738/9-10.

⁵⁸⁴ T.701/24-702/14.

and a younger girl around 10.⁵⁸⁵ From her first statement in 2000, she can name only a few people she recognizes, including the Turjaćanins, and ‘an older lady and her daughter in law with the last name Murtic.’⁵⁸⁶ What is most interesting about this is that she again discusses the Murtics in her testimony,⁵⁸⁷ but they are not on the Bikavac Schedule at Annex B of the Indictment. If these people were victims of a Bikavac fire, the Prosecution never added them to the Schedules, despite having eight years to look into the information, two amendments to the Indictment at that time when they could have been added, and incentive to add names to an already sparse list.

432. In her initial statement, she claims to have been ‘on the main road’ when this happens and places the date to be just a week after the Pionirska Street incident.⁵⁸⁸

“I could see how they were throwing bottles filled with petrol and set afire and I could see them firing bursts of fire toward the window, and they were throwing, very energetically, hand-grenades. And then I had to go away, I had no time to call on the elderly couple. I went toward the town centre. I was walking down the street in Bikavac. There was much noise, there were explosions, and they were doing the same thing as in Pionirska, but at Bikavac I was able to see it with my own eyes. And I stand behind my statement, I back it up fully.”⁵⁸⁹

433. With regard to the Bikavac crime scene, the Defence investigative expert Cliff Jenkins gave a layout of the neighborhood, marking the Bikavac house and relevant surroundings.⁵⁹⁰ In doing so, he noted that while there is little scene left to process there, of interest is that there was no small garage-like building on his visit there, but in an earlier photo, there’s a well worn path into the garage that would have taken years to build up.⁵⁹¹ While it seems like a small detail, certainly, when coupled with a house razed to the ground, no forensic evidence, and no mortal remains, it begins to paint a myriad of possibilities for what has happened on that property.

⁵⁸⁵ T.703/22-704/3.

⁵⁸⁶ 1D19, P.12

⁵⁸⁷ T.702/20-21.

⁵⁸⁸ 1D19, p.12.

⁵⁸⁹ T.712/14-21.

⁵⁹⁰ 1D212.

⁵⁹¹ T.6474/1-14.

iii. Complete lack of forensic evidence lending to reasonable doubt

434. As was the case with the Pionirska counts, the lack of forensic evidence is an insurmountable obstacle to the Prosecution's case against Milan Lukić for Bikavac as well.

435. As previously stated in the section as to Pionirska, a total of 5 witnesses were called during the Prosecution's case in chief relating to Bikavac in one form or another.⁵⁹²

436. It has to be stressed yet again that Amor Masovic's testimony was that not a single forensic bodily remain was recovered from the Bikavac site during any of the work of his commission.⁵⁹³ Defence expert Cliff Jenkins postulated that an investigator would expect to find remains if the crimes happened as alleged, as "[r]egardless of how intense the fire is, not all the body parts will burn of all of the victims." He postulated that if the allegations are true, he has every reason to believe there should be trace evidence in the soil.⁵⁹⁴ This type of work could have been done similar to the work being done in the area by Dr. Clark and his teams.⁵⁹⁵ This therefore has to point to the reasonable inference that the crime as alleged did not occur, and that thus criminal liability cannot attach to Milan Lukić.

437. Problems with the Prosecution's evidence as to this count have been set forth in great detail on the other sections of this submission. The Forensic team of the Defense did have some findings with respect to Bikavac that are of some significance and thus need to be considered.

438. First and foremost – although partly covered elsewhere, it must be stressed that Zehra Turjaćanin, the sole "eye-witness"/survivor witness brought by the Prosecution for the Bikavac Counts, gave very specific testimony as to the site, as follows:

- there was a space of 65 centimeters allowing her to get past the metal garage door that blocked the exit at the Bikavac house⁵⁹⁶
- She identified the door depicted in P54 as being the garage door, or exactly identical to the garage door she slipped through, with the opening being exactly the same.⁵⁹⁷

⁵⁹² VG-058;VG-114;VG-119;VG-063;VG-035.

⁵⁹³ T.3185/14-3186/4.

⁵⁹⁴ T.6477/1-9.

⁵⁹⁵ T.6477/10-6478/13.

⁵⁹⁶ T.2316/24-2317/4.

⁵⁹⁷ T.2320/6-2321/2.

439. It was precisely as the Defense was attempting to elicit more relevant clarification and testimony from Ms. Turjaćanin on these garage doors that Judge Robinson abruptly and without explanation or consultation of the rest of the Chamber ended the cross-examination and did not permit Defense counsel to ask any more questions, over the objection of counsel.⁵⁹⁸

440. The Defense expert mission to Višegrad in January of 2009 visited the Bikavac site, and located the garage doors in question. Photographic evidence was preserved and presented by the Defense Experts of these garage doors that had been presented prominently in the Prosecution's evidence through Ms. Turjaćanin.⁵⁹⁹

441. Cliff Jenkins testified that he saw multiple houses with these same garage doors attached, in the area.⁶⁰⁰ Measurements were taken of the door in question, and the door itself was 5 feet 5 inches (165 centimeters) whereas the window on it was 9 inches (22.9 centimeters).⁶⁰¹ These measurements were confirmed by Benjamin Dimas, who had photographic evidence of the actual measuring.⁶⁰² It is thus very clear that the testimony of Ms. Turjaćanin, as to fitting through this type of window, is hardly believable. One has to consider that the Prosecution, in taking the picture, and being aware of the scale of the door, purposely presented misleading testimony through Ms. Turjaćanin to bolster her story. This is a travesty of justice that a proper court of law ought to investigate as an example of Prosecutorial misconduct of the highest order.

442. As part of his investigation, Mr. Jenkins also uncovered that a garage or shed existed on the site that was alleged to be where the Meho Aljić house stood, and found a photograph of the same showing the garage existed at the time of the International Forces being in Višegrad.⁶⁰³ It is remarkable that this is not mentioned in any of the Prosecution evidence, and frankly it calls into serious question that testimony, as witnesses appear to be basing their "knowledge" of the area on the photographs of the Prosecution, taken in 2008, rather than the

⁵⁹⁸ T.3347/6-9.

⁵⁹⁹ 1D215,1D214,1D172,1D173.

⁶⁰⁰ T.6481/6-15.

⁶⁰¹ T.6481/19-6483/4;1D214.

⁶⁰² T.5711/12-5713/10; 1D172,1D173.

⁶⁰³ 1D213.

true look of the terrain from 1992, leading to the conclusion that these witnesses were not there are making up a story.

443. Also of some importance to the appreciation of this site, is the testimony of Benjamin Dimas as to how difficult it was to access the site with vehicles, including a small car.⁶⁰⁴ This not only would affect and make difficult any herding of persons into this house, it would likewise affect the ability to get any heavy machinery in there to clean out any forensic evidence, as the prosecution has postulated.

444. There is not only reasonable doubt, but a high degree of doubt as there is simply no answer as to what happened to the forensic remains of Bikavac. While the Prosecution postulated that the bodies were moved and buried in another location, there is no forensic evidence to support that, no record of that being done, and no witnesses who saw the remains removed or who can testify to where they are today. Therefore, this possibility exists only equal to all other possibilities, including that in which neither fire happened at all, a “distinct possibility” noted the Defense police/investigations expert, Mr. Clifford Jenkins.⁶⁰⁵ When it is a very real possibility that deaths did not even occur, there is certainly reasonable doubt as to the case which would convict a man of being a murderer.

445. Overall, as Mr. Jenkins put forth there's too many inconsistencies in the statements, there's too much inconsistency with the evidence, Zehra Turjaćanin's injuries do not necessarily coincide with the events that have been by her and the credibility of some of the witnesses that were in close proximity to the events, what they saw, who they identified, are in question.⁶⁰⁶ A total lack of forensic evidence, knowledge of who the victims are or what happened to their mortal remains – especially lacking this information in such a small community – goes to cast extreme doubt on the existence of the crime as it is alleged and definitely cannot convict Milan Lukić beyond a reasonable doubt of these counts.

F. THE PROSECUTION HAS FAILED TO ESTABLISH THE LIABILITY OF MILAN LUKIĆ FOR THE ALLEGATIONS OF COUNTS 18-19 RELATING TO THE KORIĆ KILLING.

⁶⁰⁴ T.5985/10-19.

⁶⁰⁵ T.6577/15-17.

⁶⁰⁶ T.6502/17-6503/1.

446. The Indictment, at Counts 18–19 alleges criminal responsibility against Milan Lukić for the killing of Hajra Korić. At the outset, it should be noted that no forensic evidence was presented evidencing the death of such an individual, and Ewa Tabeau’s proof of death project contains no biographical confirmation of such a victim.⁶⁰⁷

447. Indeed, only a single witness was brought by the Prosecution to attempt to prove their allegations as to these counts of the Indictment, VG-35. For the reasons set forth below, this evidence is not reliable, and the credibility is called into question.

448. VG-35 testified in the Prosecution case-in-chief *viva voce* on 15 September 2008.

449. VG-35 claimed that she ran into Milan Lukić and a young boy outside of her house on 26 June 1992, at which time Milan Lukić introduced himself by name and gave her his year of birth.⁶⁰⁸ She later confirmed that this was actually the first time she had ever seen or met Milan Lukić.⁶⁰⁹

450. She further claimed that she was scared merely by the mention of his name as soon as he introduced himself because she had heard he was doing bad things around Višegrad.⁶¹⁰ However, interestingly enough, when pressed on this point in cross-examination, she confirmed that no one telling her about the bad things Milan Lukić did had ever described his physical appearance to her.⁶¹¹

451. This is critical to the credibility of this witness, who identified Milan Lukić through the flawed in-court identification process, which is discussed elsewhere in this brief. It should be noted in this regard that VG-35 conceded she could identify Milan Lukić in this regard by way of elimination because she knew Sredoje Lukić, but she claimed she recognized Milan Lukić as well.⁶¹² Unfortunately, the credibility of this assertion is put into doubt since the sworn statements given by the witness describe Milan Lukić in terms that clearly do not coincide with the physical appearance of the Accused. Specifically, she

⁶⁰⁷ P119.

⁶⁰⁸ T.1654/13-25.

⁶⁰⁹ T.1693/17-21.

⁶¹⁰ T.1655/3-8.

⁶¹¹ T.1699/5-20.

⁶¹² T.1700/3-16.

described Milan Lukić as having many birthmarks and blue eyes.⁶¹³ Interestingly, this comports with the Interpol warrant description of Milan Lukić⁶¹⁴ that would have been available to the witness, the Prosecution, and Bakira Hašević's organization at the time that witness was prepared for her testimony.

452. We know from photographs of the Accused entered into evidence that he has no such birthmarks and no blue eyes.⁶¹⁵

453. Cliff Jenkins testified as to his physical examination of the Accused at UNDU which does not reflect the types of things identified in the Interpol Warrant, nor this witness's description.⁶¹⁶

454. Another mark against the credibility of this witness is her adamant testimony that there was only one such person named Milan Lukić in Višegrad in 1992.⁶¹⁷ However, the court has had uncontroverted evidence that indeed there was at least one other Milan Lukić, also from Rujiste, in Višegrad at that time.⁶¹⁸

455. Even more damning of the falsity of this witness's identification, is her testimony that she WAS shown photographs of Milan and Sredoje Lukić at the time of giving statements, but that she did not identify them at that time because she wanted to wait for them to be arrested so she could identify them in court.⁶¹⁹ Former OTP Investigator Hansen testified no photos of Sredoje Lukić were shown to witnesses, and a photo of Milan Lukić was only shown to VG-32, and thus this evidence is contrary to the witness's account.⁶²⁰ The only photographs known to have been shown to a limited number of witnesses were shown to be surveillance photos of a man with a mustache and a huge mole on his face.⁶²¹ Quite frankly, no matter how one looks at it, the totality of other evidence simply does not support the assertions of the witness as to identifying Milan Lukić in photographs.

⁶¹³ T.1713/10-1717/20;1D44.

⁶¹⁴ 1D237.

⁶¹⁵ 1D45;1D46.

⁶¹⁶ T.6518/8-24

⁶¹⁷ T.1717/14-21.

⁶¹⁸ T.4486/7-13; 1D104.

⁶¹⁹ T.1696/9-20.

⁶²⁰ T.3084/23-3085/4;3086/1-16.

⁶²¹ 1D75;T.3117/3-3118/2.

456. Even apart from the identification and description inconsistencies, there are serious other flaws with the testimony that seem to indicate this witness was tainted by Bakira Hašević to give prepared and false testimony by this Tribunal. The very serious and very clear-cut evidence of Ms. Hašević's role in obtaining perjured testimony and threatening witnesses has been made available to the Chamber.

457. Remarkably, despite being a the sole witness for the Korić killing, VG-35's examination in chief by Dermot Groome started off with everything EXCEPT the Korić killing, and rather suspiciously, or coincidentally, this witness who had never seen Milan Lukić prior to 26 June 1992, in her direct examination fills in the blanks and ties him to many other aspects of the Prosecution's Indictment, even to unindicted crimes, particularly those that have been promoted and complained about by Bakira Hašević. She is only asked about the Korić killing near the end of her direct examination.⁶²²

458. By way of illustration and summary, in her direct examination VG-35 happens to try and fill the Prosecution's coffer of allegations about the following things before she is even questioned about the Korić Killing for which she is being actually presented:

- Milan Lukić driving Ekrem Dzafic's car;⁶²³
- Marking Meho Alić House (Bikavac);⁶²⁴
- Milan Lukić in Behia Zukić's car at Bikavac 27 June 1992 (Alibi Rebuttal);⁶²⁵
- Bikavac Fire and Zehra Turjaćanin;⁶²⁶
- Unindicted crimes;⁶²⁷
- The Presence of Hamdija Vilić's family together with the "Jelacic" refugees at Bikavac and their perishing at the alleged Bikavac Fire;⁶²⁸

459. This is just simply too much coincidence and convenience for all this to come from one witness who is only disclosed as testifying on the Korić Killing. Respectfully, it defies logic.

⁶²² T.1684/21-1685/3.

⁶²³ T.1665/17-1666/1.

⁶²⁴ T.1659/2-1660/10;P101.

⁶²⁵ T.1674/24-1677/8.

⁶²⁶ T.1682/5-1683/21.

⁶²⁷ T.1670/3-1671/12.

⁶²⁸ T.1679/1-1680/12;1684/6-20.

460. Once we finally get to the alleged Korić Killing the testimony is rather brief, and describes Milan Lukić shooting Hajra Korić in the chest in the middle of a discussion about her husband being in Belgrade.⁶²⁹ This is in contradiction with the testimony of CW2 on this same topic, wherein allegedly she was an eyewitness.

461. There are several things of importance to focus on arising out of the testimony of CW2.

462. First, we have the clear and unequivocal testimony of CW2 that Milan Lukić was a blond haired man who went to school with her husband and whose brother lived in the same house as her husband.⁶³⁰

463. The Trial Chamber will recall that CW2 was a witness who is related to VG-35, whose contact details the Prosecution at first refused to give to the Defense, even though they disclosed under Rule 68 a sworn statement⁶³¹ by this witness given to the Bakira Hašević Organization. It was only after the Prosecution was ordered to provide the contact info to the Defense that they did. The original BCS statement given by this witness to Bakira Hašević and Mirsada Tabakovic Association of Women Victims of War was never disclosed to the Defense.

464. CW2 testified that it was Bakira Hašević that sought her out to give a statement on this matter, not the other way around.⁶³² She did not know how they came to seek her out in July of 2008.⁶³³ However, the Chamber will recall that of record we have the information that Bakira Hašević (and Nerma Jelacic) sought to seek out and locate witnesses as the Milan Lukić Trial was preparing, and in particular when the Prosecution announced it did not have evidence to include rapes as a charge against Milan Lukić. It is respectfully submitted that VG-35 was sought out in the same manner.

465. The Chamber already has before it the undisputed and confirmed information as to Bakira Hašević threatening and coercing Bosnian Muslims to give false testimony as to rapes

⁶²⁹ T.1687/11-17.

⁶³⁰ T.7079/6-7080/15.

⁶³¹ 1D228.

⁶³² T.7067/17-7068/1.

⁶³³ T.7071/5-14.

with the aim of putting all “Chetniks” in jail.⁶³⁴ The Prosecution made a telling admission, when Dermot Groome in said:

MR. GROOME: Your Honour, other than that, Your Honour, I have no questions. Your Honour, just to respond to Mr. Cepic, this was not a Prosecution witness, given the allegations made against Ms. Hašević organisation when we were provided with this statement from that organisation in -- over the summer, I was already aware of those allegations, **and to protect the integrity of the Prosecution case, it was my instruction that this woman not be contacted and not be interviewed.** So and the statement was disclosed, so the statement was disclosed on the 14th of October. But having said that, I had no obligation to even disclose this. I made it available to the Defense; it was disclosed again this morning on the basis that I was going to seek its admission into evidence, and that was a decision that I came to early this morning after having read the statement. Thank you.⁶³⁵

466. Respectfully, this concession by Mr. Groome verifies that it is an entirely plausible and entirely proper inference that Bakira Hašević and her organization have been tampering with witnesses trying to obtain a conviction of Milan Lukić by way of perjured testimony. The fact that CW2’s original statement is different than the one she gave to Bosnian prosecutors just weeks later,⁶³⁶ and then that she wasn’t sent as a Prosecution witness in this case, shows the degree to which Bakira Hašević is involved in custom tailoring statements against Milan Lukić. That can be the only explanation for why VG-35 with the remarkably convenient recall different from CW2 is called as a witness. The Chamber cannot ignore the inability of CW2 to explain away the apparent inconsistency, even upon the Chamber’s questioning. The principle of *in dubio pro reo* dictates that where a reasonable inference exists in favor of innocence of the Accused, the Trial Chamber is bound to accept that one and acquit.

467. Accordingly, here there exists clear and convincing inference of the fact Bakira Hašević tailored the testimony of these two women as to the Korić Killing, and thus that evidence cannot sustain the burden of proof to convict Milan Lukić on these counts.

⁶³⁴ See Pending Defense Motion.

⁶³⁵ T.7085/19-7086/7.

⁶³⁶ P336.

G. The Prosecution has failed to establish the liability of Milan Lukić for the Allegations of Counts 20-21 relating to the Uzamnica Barracks.

468. While the Prosecution lead the testimony of four persons who were detained at the Uzamnica barracks within the relevant time of the Indictment, none of these individuals adequately identified the Accused Milan Lukić as the man they knew as ‘Milan Lukić’ who visited the Uzamnica barracks from June 1992 to October 1994. As there was a misidentification from the start of their arrival at Uzamnica that has perpetuated to the point of these charges being brought, the Defense submits that these charges should be dismissed and the Accused Milan Lukić acquitted with regard to these Counts.

469. To begin, none of the four men had personal knowledge of the Accused Milan Lukić before the war, save VG-25, who was not brought for cross-examination and testified under Rule 92qtr.⁶³⁷ In VG-25’s original statement he says he knows Milan Lukić from his childhood,⁶³⁸ however in April 2008 he corrected his statement to say that he “knew Milan Lukić for perhaps three of [sic] four years before the war rather than since my childhood.”⁶³⁹ This is an interesting change in being able to identify him, as Milan Lukić was not living in Višegrad for the four years leading up to the Indicted events. At no time prior to 1992 did the Accused Milan Lukić live in Obrenevac, as VG-25 indicates he was told by his fellow detainee, Mr. Saban Muratagić.

470. Interestingly enough, it is Mr. Saban Muratagić who also was the basis for at least two, if not three, of the detainee’s knowledge of their assailant’s identity. Mr. Adem Berberović had no prior knowledge of Milan Lukić⁶⁴⁰ and he only learned the identities of whom he believes to be ‘Milan Lukić,’ ‘Sredoje Lukić,’ and ‘Milos Lukić’ from another witness, Mr. Nurko Dervisević.⁶⁴¹ Mr. Islam Kustura also did not know Milan Lukić before being taken to Uzamnica and there ‘was told’ who the person was.⁶⁴² Mr. Dervisevic only

⁶³⁷ Under Defense objection, the Trial Chamber ruled to permit VG-25 to testify under Rule 92qtr, despite being alive and contactable by the Prosecution and able to meet with the Prosecution at the Sarajevo field offices in April 2008.

⁶³⁸ P168.

⁶³⁹ P170 para.2.

⁶⁴⁰ T.2506:16-17; P142, p.9.

⁶⁴¹ T.2507:18-2508:2.

⁶⁴² T.2181/16-19.

had any information of the identities of the men as he had been told by Saban Muratagić.⁶⁴³ He did not know Milan Lukić before Uzamnica.⁶⁴⁴

471. Essentially, then, named identification of ‘Milan Lukić’ comes primarily from hearsay of a witness not called in this trial. Mr. Berberović’s identification is double hearsay – he heard from Mr. Dervisević who was told by Mr. Muratagić.

472. The vague description evidence given – with general descriptors as ‘tall’ or ‘black hair’ – cannot provide any reliability and should take into consideration the harsh living conditions, multiple guards coming and going – Berberović names several guards he sees at the Uzamnica barracks, including a ‘Milos Lukić “who worked in Austria until the beginning of the war –, and physical problems of the witness such as Dervisević who had eyesight problems while in Uzamnica and complained that he could not see properly.⁶⁴⁵

473. Reasonable doubt of the co-Accused’s presence in Uzamnica likewise draws a reasonable inference of mistake identity of ‘Milan Lukić’. Mr. Kustura says that ‘Sredoje Lukić’ was always with him (him being Milan Lukić).⁶⁴⁶ However, this is in direct contradiction of VG-25 who states he knows Sredoje Lukić from before the war and says he never saw him at Uzamnica.⁶⁴⁷

474. In this instance, photo board evidence – if done properly – may have been of some assistance. While there were photo spreads shown to Mr. Berberović, the Defense does not have the ability to see what person he identified as someone he believed to be “Milan Lukić” (having also identified a “Mitar Vasiljević” and “Sredoje Lukić” and another man he recognized from Višegrad on the same photo board)⁶⁴⁸, as the photo board used in this statement was lost by the Prosecution offices.⁶⁴⁹ If the proper Standard Operating Procedure was followed, however, there should have been only one ‘Accused’ or ‘Suspect’ on the photo board as “[w]here there are multiple suspects, separate photo boards must be used for each

⁶⁴³ T.2508:15-19; T.1962/6-11.

⁶⁴⁴ T.1961/13-16.

⁶⁴⁵ T.2564/24-2565/20.

⁶⁴⁶ T.2181/11-12; T.2189/8.

⁶⁴⁷ P171, page 3, para.9.

⁶⁴⁸ 2D20, p.3.

⁶⁴⁹ T.2549/22-2550/7.

suspect.”⁶⁵⁰ As he identified four people of a sheet of 12, including the three Accused by this Tribunal and another individual from Višegrad, it casts serious doubt that he was correct about all of the identities or, if not, it questions the methods employed.

475. VG-25 was also shown photos and identified a man who is not the Accused Milan Lukić as being Milan Lukić. In his set of photos, a set of surveillance photos disclosed mid-trial by the Prosecution, it is clear that a standard 12-man photo board was not employed.⁶⁵¹ When shown four photos (found at Exhibit 1D75), and asked an open-ended question – “Do you identify any persons in this picture?” – VG-25 identified the same person in three of the photos, twice saying the person ‘resembles Milan Lukić’, once stating he ‘identifies his cynical smile’ and concludes by picture X3 that ‘[t]he person on this picture also has the same face as Milan Lukić’.⁶⁵² The statement is sworn and signed and is proof that a clear identification cannot be made by this witness as to who is the man he knows as ‘Milan Lukić’. VG-25 is the only witness called who claims to have any knowledge of Milan Lukić before Uzamnica, however, in his statement to the ICTY in 1998, VG-25, says that in early to mid-May 1992 he recognized a dark red car “as the one that Milan Lukić had taken from Behija Zukic”.⁶⁵³ In fact, the only incidents he recalls of Milan Lukić before he learns of him at Uzamnica, are both stories told with the red Passat being the impetus of identification; notably, he dates them at 10 and 12 May, both dates before the death of Behija Zukic.⁶⁵⁴ Like many other witnesses, he was told the story that ‘Milan Lukić’ had killed Behija and taken her car.

476. As further evidence that the man who beat them was not Milan Lukić, but someone mistakenly given that identity, it was shown that Mr. Milan Lukić was not even in the area at the later dates these men claim to have seen ‘Milan Lukić’. It was physically impossible for Milan Lukić to have been there when they claim to him to be in 1993, which makes clearly a misidentification of someone else from the start.

477. Mr. Berberović claimed that ‘Milan Lukić’ “came throughout the whole year of 1993, but not every day.... sometimes two or three days would elapse and then he would

⁶⁵⁰ 1D74, p.1, sec.2.

⁶⁵¹ Id. para 3, bullet 1.

⁶⁵² 1D75, p.2

⁶⁵³ P168, p.3.

⁶⁵⁴ T.1734-35.

come, then he would be absent for a certain period of time, then he would appear again, and so on.”⁶⁵⁵ When questioned before the Trial Chamber, he believed the man he knew as ‘Milan Lukić’ was there every month of 1993. Like Mr. Berberović, Mr. Kustura states that he saw Milan Lukić regularly in 1993, specifically that he saw him, from the time he arrived in 1992, every other day until the summer of 1994.⁶⁵⁶ Likewise, Mr. Dervisević is certain that ‘Milan Lukić’ was the one beating him and others in September 1993.⁶⁵⁷

478. However, it would have been impossible for the Accused, Mr. Milan Lukić, to have been at the Uzamnica barracks once a month for the whole of 1993 because he was detained by authorities for a good deal of the year. From 10 March 1993 to 14 April 1993 and from 26 June 1993 to 6 April 1994, the Accused, Milan Lukić, was detained by Serbian Authorities on a charge that was subsequently dismissed.⁶⁵⁸ In this vein, then, it would have only been possibly for the Milan Lukić charged here to be present at Uzamnica on a monthly basis only 4-5 of the early months, and certainly not ‘more than ten’ times and ‘every month’ as asserted by Mr. Berberovic.⁶⁵⁹

479. In sum total, a conviction on these Counts would have to be reliant upon a proper identification that the Accused Milan Lukić was who these men believed to be ‘Milan Lukić’. The information they provided was based on hearsay and sometimes double hearsay with the individual who ‘told them it was Milan Lukić’ not being available to testify in this case. Factoring in additional identifications of a ‘Milos Lukić’, poor eyesight, and the conditions, it makes the identification unreliable from the start. However, the fact that at least three of the four men insist that the man who beat them that they knew as ‘Milan Lukić’ was there in the latter half of 1993 (VG-25 was not available for cross-examination, so further detail about time could not be drawn from him to assist in this matter), is strong proof that the man they believed to be ‘Milan Lukić’ was in fact not the same man Accused in this trial. As evidence shows that the Accused Milan Lukić was detained at that time – for the larger part of 1993, in fact, it was impossible for him to have been the same man they knew to be ‘Milan Lukić’ and their assailant. There was a misidentification from the start.

⁶⁵⁵ T.2539:24-2540:5.

⁶⁵⁶ T.2199/17-19.

⁶⁵⁷ T.1993/10-19.

⁶⁵⁸ 1D238.

⁶⁵⁹ T.2540/11-16.

480. The Prosecution, thus, has failed to prove beyond a reasonable doubt that the Accused present in this case was the perpetrator of any crimes at Uzamnica barracks as they have failed to prove the identity of the actors. As such, Milan Lukić must be acquitted of these charges.

VI. PROSECUTION'S FAILURE TO REBUT THE ALIBI OF MILAN LUKIĆ

A. Milan Lukić cannot be found guilty of the Drina and Varda incidents due to an un rebutted alibi

481. The Indictment alleges that Milan Lukić, Mitar Vasiljević, and others took part in a shooting of several Bosnian Muslim civilians by the Drina River, near the Sase junction on 7 June 1992.

482. The witnesses for the Prosecution⁶⁶⁰ were rather specific that this incident occurred 7 June 1992.

483. The evidence that has been introduced at trial, and which has been un rebutted by the Prosecution, demonstrates that Milan Lukić was not in Višegrad, and thus could not have near the Drina River, on that date and time.

484. Likewise, the Indictment alleges that Milan Lukić took out several persons from the Varda Factory on 10 June 1992, who were then shot and killed.

485. The witnesses for the Prosecution were also specific as to the date of this incident.

486. However, the un rebutted evidence shows that Milan Lukić was not in Višegrad on that date, and thus is proven innocent by way of alibi.

487. Several witnesses were brought by the Defense establishing the nature of the alibi for Milan Lukić's whereabouts between 7 June 1992 and 10 June 1992. It should be noted in this regard that one more alibi witness⁶⁶¹ was slated to be brought by the Milan Lukić

⁶⁶⁰ VG-014, VG-079, VG-032, MLD25

⁶⁶¹ MLD16.

Defense, but the Trial Chamber refused to grant protective measures that had been sought,⁶⁶² thus making it impossible for this witness to be heard.

488. According to the Alibi Notice of Milan Lukić, he traveled from Višegrad to Belgrade on 7 June 1992, with his mother, and two persons of Bosnian Muslim ethnicity, by way of automobile. The purpose of this trip was dual, to seek medical care for his mother, and also to help the two Bosnian Muslim individuals escape from Višegrad to Novi Pazar (a region of Serbia with an ethnic Muslim majority).

489. The evidence adduced at trial established and corroborated the Alibi of Milan Lukić for the stated time period of 7 June to 10 June 1992.

490. Zeljko Markovic testified on 17 December 2008. This witness, a father of two children,⁶⁶³ worked for 20 years as a law enforcement officer of the Republic of Serbia Ministry of Interior (MUP).⁶⁶⁴

491. This witness testified that he knew Milan Lukić very well, from 1987 onwards, and would socialize with him in Belgrade, particularly at the Studenski Grad quarter.⁶⁶⁵

492. Zeljko Markovic unequivocally testified that Milan Lukić contacted him in Belgrade on 7 June 1992, to state that he was in Belgrade, and to see if the two of them could get together at the Index 10 Café.⁶⁶⁶ Mr. Markovic is quite certain about the date, given that he was at the time celebrating the anniversary of his moving in with his wife, with his kum (god-brother), and that date being 7 June.⁶⁶⁷

493. Zeljko Markovic confirmed that he then met with Milan Lukić at the Café Index in the Studentski Grad part of Belgrade on the morning of 8 June 1992, at around 10:00 AM.⁶⁶⁸ During the course of the meeting, Milan Lukić explained that he was in Belgrade so his mother could obtain medical treatment, and inquired about the security situation on the road

⁶⁶² T.4683/1-4;4684/17-22.

⁶⁶³ T.3840/14.

⁶⁶⁴ T.3840/15;3843/2-6.

⁶⁶⁵ T.3843/3-23.

⁶⁶⁶ T.3856/17-3857/19.

⁶⁶⁷ T.3856/17-3857/1.

⁶⁶⁸ T.3858/17-20.

to Novi Pazar from Belgrade, explaining he had some Muslim friends that he needed to take there.⁶⁶⁹

494. Markovic spoke with Milan Lukić on the telephone on the 10 of June 1992 in Belgrade.⁶⁷⁰

495. The Prosecution did virtually nothing to challenge the sworn testimony of Mr. Markovic, instead choosing to attack his recollection of when the war precisely broke out in Bosnia-Herzegovina, even though he is not from there.⁶⁷¹ Although Markovic did not know the exact date, he described in exhaustive detail the events surrounding the outbreak, and pegged the various Yugoslav Conflicts to the outbreak of violence at a soccer game in 1991.⁶⁷² The line of questioning by the Prosecution ignores completely the very significant rationale offered by Mr. Markovic for his explicit knowledge of the date he saw Milan Lukić, namely the connection to the anniversary of his wife and he embarking on a joint life together, and the annual celebration of the same with their Kum,⁶⁷³ something of more personal noteworthiness than the outbreak of one conflict of many in the region.

496. In the light of such clear and convincing evidence, the Prosecution failed to rebut the testimony of Zeljko Markovic as to Milan Lukić's alibi.

497. In any event, Mr. Markovic was not the sole witness to speak about Milan Lukić's presence in Belgrade during the aforementioned period, and thus provide an alibi from the Varda and Drina allegations. Another witness completely independent of Markovic was indeed MLD15.

498. MLD15 has known Milan Lukić since 1990 when they were both in a third country.⁶⁷⁴ After that occasion, the two would socialize in Belgrade when both were there⁶⁷⁵ and had some common friends, including MLD16.⁶⁷⁶

⁶⁶⁹ T.3858/22-3859/5.

⁶⁷⁰ T.3860/3-6.

⁶⁷¹ T.3869/16-3871/25.

⁶⁷² T.3872/1-11.

⁶⁷³ T.3881/4-8.

⁶⁷⁴ T.4087/19-23.

⁶⁷⁵ T.4090/4-15.

⁶⁷⁶ T.4088/22-4089/1.

499. MLD15 had occasion to plan a surprise engagement party for his friends, wherein he was to present an engagement ring to his fiancée, for the 7th of June 1992.⁶⁷⁷ This party was slated to take place in Zemun, a part of Belgrade, at the Maca restaurant.⁶⁷⁸

500. On that date, 7 June 1992, MLD15 received a telephone call from Milan Lukić, announcing that the same was in Belgrade, so MLD15 invited him to the engagement party that evening.⁶⁷⁹ MLD15 confirmed that he received the same explanation from Milan Lukić for his presence in Belgrade, namely that his mother needed to see a doctor and some friends had accompanied them.⁶⁸⁰

501. MLD15 went on to testify that Milan Lukić indeed did arrive at the engagement party at the Maca restaurant in Zemun, Belgrade, on the evening of the 7th of June 1992, which was made memorable by the fact that MLD16, who had some quarrel with Milan Lukić, got up and left the party at that time.⁶⁸¹ This caused MLD15 to leave his own party to drive his friend home, before returning to the party, which is why he remembers the event so vividly.⁶⁸²

502. In addition to the testimony as to that evening, MLD15 further saw Milan Lukić two days later, on 9 June 1992, also in Zemun, Belgrade, at a billiard hall where the two of them had occasion to play billiards.⁶⁸³ Indeed, the extent of that encounter was such that MLD16 came over with the witness' fiancée and made up with Milan at the Billiard Hall.⁶⁸⁴

503. The Prosecution's cross-examination of this witness bordered on the incredible, after repeatedly asking the witness to repeat the name of his deceased fiancée,⁶⁸⁵ the Prosecution tried to insinuate that Milan Lukić drank alcohol at the engagement party,⁶⁸⁶ which even if true would be irrelevant to the alibi. In any event, the witness verified his

⁶⁷⁷ T.4089/25-4090/3;4091/3-24.

⁶⁷⁸ T.4091/25-4092/6.

⁶⁷⁹ T.4092/16-19.

⁶⁸⁰ T.4093/1-2.

⁶⁸¹ T.4093/21-4094/8.

⁶⁸² T.4094/6-13.

⁶⁸³ T.4095/4-24.

⁶⁸⁴ T.4095/25-4096/20.

⁶⁸⁵ T.4661/22-24;4668/13-4469/8.

⁶⁸⁶ T.4674/22-4675/4.

knowledge of Milan Lukić by stating that Milan Lukić to his knowledge never drank alcohol.⁶⁸⁷

504. The Prosecution also presented the main thrust of its case, which is the ludicrous and despicable practice of insinuating that any contact between the Defense team and witnesses constituted evidence of false testimony. Such a reprehensible act of throwing a negative taint on normal Defense obligation and task is indicative of how the Prosecution team, untethered by the Trial Chamber, has gone out of control and tarnished the proceedings, irrevocably harming due process, the interests of justice, integrity of the proceedings, and all the while infringing upon the rights of the Accused, trying to turn on its head the burden of proof and presumption of innocence.

505. It should be recalled at this point that the Trial Chamber did not permit the testimony of MLD16 to corroborate further the foregoing events, refusing to grant protective measures to the same.⁶⁸⁸

506. In spite of the inability to hear from MLD16, the Trial Chamber heard from more witnesses verifying the whereabouts of Milan Lukić in Serbia (and not in Bosnia) during 7 June 1992 through 10 June 1992. One such witness was MLD17, a neighbor of Milan Lukić in Belgrade.

507. This witness (MLD17) testified that she saw Milan Lukić on several occasions outside his apartment in Belgrade. In total she saw him with her own eyes on several occasions beginning 7th June 1992 (linked in her memory to a celebration she was hosting to commemorate the purchase outright of her apartment) and gave very detailed and explicit testimony in private session as to her very significant discussions and contact with him on those occasions, through the 10th of June 1992.⁶⁸⁹ There is simply no way that Milan Lukić could travel back and forth between Belgrade and Višegrad during that time period to be present for the encounters with MLD17, and the alleged incidents at Varda and Drina River.

⁶⁸⁷ T.4575/4.

⁶⁸⁸ T.4683/1-4;4684/17-22.

⁶⁸⁹ T.4708/25-4707/16.

508. It should be noted in this regard, that MLD17 also corroborated that spoken of by other witnesses, namely that Milan Lukić was accompanied by his ailing mother who required a doctor's review in Belgrade, and some friends who were staying in his flat.⁶⁹⁰ This witness, spoke highly of Milan Lukić and his interactions with neighbors in her building, as well as noting that she saw him again, for the second-to-last time, in September of 1992, when the same came with his girlfriend, Mirjana Krsmanovic, from Višegrad.⁶⁹¹

509. The Prosecution, apart from showing the lady a confusing, unmarked overhead map with no photographs of buildings or streets,⁶⁹² attempted again to place the bulk of their case on accusing that any contact with the Defense of Milan Lukić was tantamount to a judicial finding of untruthful testimony,⁶⁹³ a reprehensible practice discussed elsewhere in this brief.

510. Another witness who testified as to this period of time in support of the proffered alibi of Milan Lukić was MLD1, an ethnic Bosnian Muslim who was with Milan Lukić, during the travel from Višegrad to Belgrade, stayed at Milan Lukić's apartment in Belgrade, and then traveled to Novi Pazar.

511. Specifically, MLD1 testified that Milan Lukić saved him and his girlfriend from Višegrad, transporting them to Belgrade on precisely 7 June 1992.⁶⁹⁴

512. MLD1 testified with extreme particularity as to precise manner that the trip was planned, including the route taken.⁶⁹⁵

513. He likewise testified confirming the presence of Milan Lukić's mother in the car on the trip, and in Belgrade.⁶⁹⁶

514. MLD1 gave very detailed information about the apartment of Milan Lukić in Belgrade where he stayed during the time period in question.⁶⁹⁷

⁶⁹⁰ T.4703/3-18.

⁶⁹¹ T.4706/17-25.

⁶⁹² P242.

⁶⁹³ T.4723/14-4728/22.

⁶⁹⁴ T.4337/2-24.

⁶⁹⁵ T.4336/4-4338/7.

⁶⁹⁶ T.4336/4.

⁶⁹⁷ T4339/8-22.

515. MLD1 also testified that on 10 June 1992, Milan Lukić drove him and his girlfriend to Novi Pazar.⁶⁹⁸

516. This very dramatic testimony of how Milan Lukić saved the witness' and his girlfriend's lives unequivocally demonstrates that the allegations against Milan Lukić—that he was in Višegrad, committing crimes on the same dates when he was saving these Bosnian Muslims en route to Belgrade—are false.

517. MLD1 gave very specific details as to his girlfriend, and the entire trip. He was a very credible witness, testifying under great threat of harm from his own Muslim co-residents, whom he testified would kill him if they knew he was testifying on behalf of Milan Lukić.⁶⁹⁹

518. MLD1's evidence was challenged by the Prosecution by bringing what was represented as a "close" relative,"⁷⁰⁰ to claim that MLD1 did not go through the ordeal that he testified to, and did not have the girlfriend that he testified to.

519. However, this approach ignored the testimony of MLD1 himself that only he had experienced those things in his life which he described and thus only he could testify to the same.⁷⁰¹

520. VG22 was asked about his knowledge of MLD1 living with his girlfriend.⁷⁰² However MLD1 was rather explicit in his testimony that he never lived there regularly, but would go there often, and always remained living with his family.⁷⁰³ In this regard it should be noted that the Prosecution in this case has made an art form out of misquoting evidence and testimony, to the point where surely it is intentional.

521. However, and most importantly, when VG22 was asked about how often he saw MLD1 during the relevant time period when all the things were going on in his life that he

⁶⁹⁸ T.4340/5-25;4341/1-25.

⁶⁹⁹ T.4326/6-4328/17.

⁷⁰⁰ VG-22.

⁷⁰¹ T.4347/4-6.

⁷⁰² T.4329/11-23.

⁷⁰³ T.4370/5-4371/13.

testified about in relation to Milan Lukić's alibi and good deeds, we learned that this "close" relative left Višegrad long before any of the events in question, and indeed had no contact with MLD1 for a couple of years thereafter, which provides a very reasonable reason for his lack of knowledge of any of the same.⁷⁰⁴

522. If one adds to this the apprehension of MLD1 toward any Muslims knowing of his good experience relative to Milan Lukić, and the fact that VG22 was described as a prominent Muslim leader,⁷⁰⁵ the Prosecution's assault on MLD1 becomes quite suspect, as it is unreasonable to believe a person afraid of his fellow Muslims would tell a prominent Muslim leader that Milan Lukić was a good man towards him.

523. MLD10 was another witness that verified that Milan Lukić was not in Višegrad during the aforementioned time and verified a segment of the alibi presented.

524. MLD10 testified that on the evening of 8 June 1992 she spoke on the telephone with Milan Lukić (who was in Belgrade) and asked if they could meet, at which time Milan suggested that they meet in Novi Pazar.⁷⁰⁶ She testified that Milan Lukić told her that he was taking some Muslims from Višegrad to Novi Pazar to escape the war zone.⁷⁰⁷ This meeting with Milan Lukić in Novi Pazar was slated for 10 June 1992.⁷⁰⁸

525. MLD10 further testified that the purpose of the meeting on 10 June 1992 was for her to send a care package for her family that was still in Višegrad, and to arrange for Milan to seek them out and give this to them.⁷⁰⁹

526. MLD10 also stated that during her telephone conversation, Milan mentioned that he was in Belgrade because his mother required some medical check-ups.⁷¹⁰ This confirms the testimony of the several other witnesses listed herein.

⁷⁰⁴ T.4367/9-11.

⁷⁰⁵ T.483/4-484/14.

⁷⁰⁶ T.3953/11-24.

⁷⁰⁷ T.3953/24-3954/4.

⁷⁰⁸ T.3954/9-12.

⁷⁰⁹ T.3954/22-3955/1.

⁷¹⁰ T.3955/13-16.

527. Finally, MLD10 confirmed that on 10 June 1992, she and her husband did in fact travel to Novi Pazar in Serbia in order to meet with Milan Lukić near a fortress and give him a care package for her family.⁷¹¹ On this occasion MLD10 saw Milan's mother in the car and spoke with her for five minutes as well.⁷¹²

528. This testimony clearly establishes that Milan Lukić could not have been in Višegrad on the 10 June 1992, and thus could not have been involved in the alleged Varda killings.

529. The Prosecution's attempts to discredit MLD10 initially consisted merely of trying to deny that she actually was from the region of Višegrad where she claimed.⁷¹³

530. Next, the Prosecution harangued MLD10 to explain why Milan Lukić took his mother for medical care in Belgrade instead of elsewhere, and inquiring what ailed his mother.⁷¹⁴ Respectfully, the Prosecution misapprehends the meaning and significance of an "alibi" witness. This witness merely is to give her eyewitness testimony of seeing Milan Lukić at a particular place in time. That is precisely what an alibi witness is. It is not someone who needs to know the substance and background facts for Milan Lukić being where the witness sees him.

531. The Prosecution also wrongly attempted, as with other witnesses, to ascribe negative connotation to the very serious fears of the witness, and the requests for protective measures. Respectfully, just because Prosecution witnesses who all sought protective measures have now been shown to be dishonest and presenting perjured testimony, does not entitle Mr. Groome to draw the same conclusions from Defense witnesses merely seeking protective measures for personal safety concerns.

532. The bulk of the Prosecution's cross-examination of MLD10 focused on her testimony as to Hamdija Vilic and did not address or rebut her alibi testimony in the slightest.

533. In its rebuttal case the Prosecution brought VG-141 for the proposition that she saw Milan Lukić in Višegrad on 10 June 1992. As with other such rebuttal witnesses, the witness

⁷¹¹ T.3957/4-3958/5.

⁷¹² T.3958/6-14.

⁷¹³ T.3991/1-3996/14.

⁷¹⁴ T.4000/16-4003/14.

alleges she saw Milan Lukić performing an unindicted crime, the killing of her father, brother and others. It baffles the mind that every alibi rebuttal witness brought by the prosecution testifies about an unindicted crime, the law of statistics would argue against such a thing to be possible. At the outset, we need to consider that very clear role of Bakira Hašević in the witness' background. It is amazing how often Hašević's head is reared in these proceedings against Milan Lukić.

534. The witness testified that after giving a statement to the Bakira Hašević organization she began receiving benefits of 500 marks a month, which is her sole source of income.⁷¹⁵ Bakira Hašević personally interviewed her.⁷¹⁶

535. After initially telling that the basis for her identification of Milan Lukić (whom she didn't know before and did not introduce himself⁷¹⁷) was from her neighbors⁷¹⁸, the witness tries then to claim it was because of the red Passat of Behia Zukic.⁷¹⁹ Even judge Robinson inquired how she would know who had seized the Zukic Passat, when this was thrown in out of the blue.⁷²⁰

536. Eventually she changes that story to add that she also testified that she gave a statement to the authorities in Visoko, who showed her a single photograph of Milan Lukić⁷²¹. After initially saying that she did not know if a written statement was generated in Visoko⁷²² the witness changed her story to say that she had given a written statement and finally that she herself hand wrote that statement in Visoko, and had been shown several photographs⁷²³. No such statement was ever disclosed or provided. Indeed the Prosecution was forced to admit they were hearing of such a statement with SIPA for the first time.⁷²⁴ Again, no such photos were ever disclosed.

⁷¹⁵ T.6787/21-6788/10.

⁷¹⁶ T.6781/16-18.

⁷¹⁷ T.6766/8-24.

⁷¹⁸ T.6768/16-22;6775/9-16.

⁷¹⁹ T6769/1-6772/22.

⁷²⁰ T.6769/5-8.

⁷²¹ T.6776/17-21.

⁷²² T.6780/5-8.

⁷²³ T.6786/9-17;T6785/5-19.

⁷²⁴ T6777/1-2; 6777/4-6780/4.

537. Given all the changes and late additions this witness added to her story, reasonable doubt is created and her allegations cannot be used to defeat the alibi evidence of Milan Lukić.

538. In whole, the Prosecution failed to rebut the alibi evidence that exists for Milan Lukić's whereabouts from 7 June to 10 June 1992. Accordingly, the principle of *in dubio pro reo* dictates dismissal of the Varda and Drina counts as a result thereof.

B. Milan Lukić Cannot be Found Guilty of the Pionirska Incident Due to an Unrebutted Alibi

539. The Indictment alleges that Milan Lukić, Mitar Vasiljević, and others took part in first robbing a group of civilians from Koritnik, and then later that same day forcibly moving the group to the house of Adem Omeragic, where they were barricaded in a room and engulfed in flames, thereby causing the deaths of 70 persons.⁷²⁵

540. The witnesses for the Prosecution were rather specific that this incident occurred 14 June 1992.⁷²⁶

541. The evidence that has been introduced at trial, and which has been unrebutted by the Prosecution, demonstrates that Milan Lukić was in Kopito at the stated time, and thus could not have been near the Pionirska Street location wherein the Omeragic house is located, on that date and time.

542. At this time it should be noted that the Defense has other very serious Defenses to this alleged incident which are dealt with elsewhere in this brief, including the startling revelations that persons scheduled as victims of this incident were found alive. However, this portion of the brief will deal exclusively with analysis of the Defense alibi of Milan Lukić for this period of time.

543. Specifically, several witnesses were brought by the Defense establishing the nature of the alibi for Milan Lukić's whereabouts between 13 June 1992 and 15 June 1992,

⁷²⁵ Indictment, para. 7-10.

⁷²⁶ VG-115;VG-013;VG-038;VG-018;VG-061;VG-084;VG-078;VG-101

establishing that the same was engaged as part of the legitimate police/army forces of Višegrad in the Kopito Region, far removed from Pionirska Street.

544. Defense Exhibit 1D25 established Milan Lukić was one of the police personnel sent along with Army personnel to Kopito on 13 June 1992.

545. The first witness to testify as to the alibi whereabouts of Milan Lukić during the aforementioned time period was Goran Djeric, who testified on 14 -15 January 2009.

546. Mr. Djeric testified that in 1992 he was a member of the Army of Republika Srpska and specifically a part of the battalion of the Rogotica Brigade that was stationed at Borike.⁷²⁷ He eventually was promoted within the Rogotica Corps to the rank of Captain.⁷²⁸ It should be noted at this point that although the Prosecution did not seek to address this at the time of his testimony, it have since tried to assert that Mr. Djeric was not a member of the VRS, in violation of Rule 90(h), by introduction of a RFA response claiming certain persons do not have military records. It should also be memorialized at this time that the Trial Chamber prevented the Defense from introducing through the Bar Table the Military Service Book of Mr. Djeric evidencing his period of service, which would have put the truth of the matter to the Prosecution's late-ditch and unprofessional efforts of presenting falsehoods after failing to confront the witness with the same.

547. He testified that during the course of his engagement as a member of the Rogotica Brigade he had occasion to encounter Milan Lukić on 14 June 1992 at Kopito, a location above Višegrad, in the direction of Borike.⁷²⁹ Kopito was the only road from Rogatica to Serbia used by the Serb forces and also crossed by the Muslim forces traveling from their strongholds of Gorazde and Zepa, and thus was the scene of constant skirmishes.⁷³⁰

548. Djeric confirmed that on the morning of 14 June 1992 his commander, Rajko Kusic, called him to tell him another commander, Vlatko Tripkovic, had been killed, and the road blocked, and thus that communications had to be established with Perica Markovic, who was

⁷²⁷ T.4102/10-4103/2.

⁷²⁸ T.4115/6-13.

⁷²⁹ T.4103/9-14.

⁷³⁰ T.4103/18-4104/20.

with the Višegrad forces.⁷³¹ The message Djeric was instructed to deliver was that Vlatko Tripkovic and others had been ambushed at the Gornje Lijeske repeator and that they were to prepare to move, when on the morning of the 15th the forces in Višegrad would set out to establish control over the road and meet with them.⁷³²

549. This message could not be communicated directly by the Višegrad brigade to its forces at Kopito because the radio equipment had been in the car driving Tripkovic.⁷³³

550. Djeric recalled setting out for Kopito with Prelic Novak, and en route encountering a situation where two killed Serbs were being extracted from a house, one with the same last name as his.⁷³⁴

551. Djeric testified that, upon arriving at Kopito, he encountered a large group of soldiers, among whom he recognized Milan Lukić and MLD4, both of whom he had known from before.⁷³⁵

552. Djeric did not know Perica Markovic,⁷³⁶ so he sought out Milan and MLD4, since he knew them both from before, told them what had occurred and they took him to see Perica Markovic.⁷³⁷

553. Djeric testified that he spent the night at Kopito with Milan Lukić, Perica Markovic, Prelic Novak and others.⁷³⁸ This fact was later verified by MLD4.⁷³⁹

554. Djeric testified that the morning of the 15th of June the forces at Kopito started to prepare and take off cleaning the road towards Višegrad, whilst he returned towards Rogatica to tell them of the action starting.⁷⁴⁰

⁷³¹ T.4105/1-11;4105/16.

⁷³² T.4107/8-23.

⁷³³ T.4108/2-5.

⁷³⁴ T.4105/25-4106/4.

⁷³⁵ T.4108/10-17.

⁷³⁶ T.4106/24-25.

⁷³⁷ T.4108/20-24.

⁷³⁸ T.4109/21-4110/5.

⁷³⁹ T.4550/8-10.

⁷⁴⁰ T.4111/9-21.

555. Djeric further testified that the location where Tripkovic perished was a dangerous spot with constant attacks, and marked with a memorial for Tripkovic's death.⁷⁴¹

556. Initially, in its attempt to rebut Goran Djeric's testimony, the Prosecution did not challenge the witness's membership in the Army. However, after Goran Djeric left, the Prosecution changed its tactic and reverted to a plodding course in the geography of the Rogotica, Sjemec, Kopito Borike region and a plodding look through Rogotica Command documents and alleged documents (that were the subject of blatant and intentional misrepresentations by Mr. Dermot Groome as to their origin and source). The alibi was unrelated to both the geography course and the document examination. Respectfully, this type of cross-examination does not refute the eye-witness testimony of the witness.

557. MLD4 was another alibi witness presented by the Defense with regards to this aforementioned time period. He testified 26-27 January 2009.

558. MLD4 testified that he joined the Territorial Defense Forces in Višegrad.⁷⁴²

559. MLD4 testified that the military command in Višegrad was located at the premises of the Hotel Bikavac.⁷⁴³ This was confirmed by several other witnesses.⁷⁴⁴

560. MLD4 testified that 13 June 1992 he was ordered by his commander to go to the military command so he could receive orders; at the command they were told they were being sent to Kopito to deal with Muslim forces passing from Gorazde to Zepa that were burning homes..⁷⁴⁵

561. MLD4 testified that when he arrived at the Command at 9-10am he saw soldiers and policemen gathering there.⁷⁴⁶ Among these persons MLD4 recognized Milan Lukić.⁷⁴⁷ Milan Lukić was in the company of other persons wearing camouflage uniforms that said

⁷⁴¹ T.4111/22-4115/5.

⁷⁴² T4536/12-4537/16.

⁷⁴³ T.4539/8-12.

⁷⁴⁴ T.4564/14-24; 4568/1-8.

⁷⁴⁵ T.4542/17-4543/16;4563/19-21.

⁷⁴⁶ T.4543/12-23.

⁷⁴⁷ T.4544/1-7.

“Milicia” on the sleeve, denoting them to be police.⁷⁴⁸ MLD4, Milan Lukić, and the personnel assembled in front of the command were transported to Kopito, where they were met by commander Vlatko Tripkovic.⁷⁴⁹

562. According to MLD4, Tripkovic then set out for Višegrad for a briefing, and left the men under the charge of Perica Markovic; later they learned that Tripkovic was killed on the way to Višegrad.⁷⁵⁰

563. MLD4 testified that these forces stayed in Kopito until the 15th of June.⁷⁵¹

564. MLD4 testified that on 14 June 1992 a car (a police Golf) came from the direction of Rogotica, carrying Goran Djeric, whom he knew from before, who advised them that Tripkovic had been killed, and that he had to give instructions to Perica Markovic as to an action to be undertaken from Višegrad the next day to clear the road.⁷⁵²

565. Djeric stayed overnight, and then left the next morning as the action got underway.⁷⁵³

566. According to MLD4, the forces from Kopito, including Milan Lukić, did not return to Višegrad until 1-2 pm 15 June 1992, when they were taken to the Bikavac Command.⁷⁵⁴

567. Given the testimony of MLD4, it is impossible for Milan Lukić to have been at the Pionirska Street location on the evening of 14 June 1992.

568. As with Djeric, the Prosecution’s main thrust in rebutting this alibi was to focus on geography, which the witness demonstrated a very thorough and correct knowledge of. After that tactic, the Prosecution merely wanted to dispute whether a road blocked by an attack and the deaths of persons passing, was really “blocked” or not. This was a semantics word play rather than a serious review of the evidence.

⁷⁴⁸ T.4544/25-4545/8.

⁷⁴⁹ T.4545/10-4546/14.

⁷⁵⁰ T.4546/18-23.

⁷⁵¹ T.4548/2-3.

⁷⁵² T.4548/7-4549/21.

⁷⁵³ T.4550/6-14.

⁷⁵⁴ T.4552/13-16.

569. Lastly, it should be noted that the *coup de grâce* of the Prosecution's case was when they accused the witness of not being a part of the legitimate armed forces.⁷⁵⁵ Of course, when the witness presented his original military service booklet—evidencing the service he testified to⁷⁵⁶ — and it became clear that the Prosecution had seen the documents from the relevant authorities⁷⁵⁷ FURTHER proving his military service in line with his testimony, one can only conclude that the Prosecution's effort had been defused and disemboweled.

570. MLD7 likewise testified as to the alibi relating to Kopito. MLD7 was a member of the Army of Republika Srpska from the first to the last day of the war.⁷⁵⁸ He was engaged as a commander of a communications squad.⁷⁵⁹ He was stationed within the Bikavac hotel, at the command of the military.⁷⁶⁰ He had occasion to see Milan Lukić at the command when the latter was eating with other reservist police.⁷⁶¹

571. MLD7 testified that Vlatko Tripkovic was a relative, married to his cousin.⁷⁶² He therefore was quite aware of the death of Vlatko Tripkovic, which occurred on 13 June 1992.⁷⁶³

572. MLD7 testified that Vlatko Tripkovic, at the time of his death, was Commander of a company, the fist company of the Višegrad Brigade, called the 2nd Light Višegrad Brigade.⁷⁶⁴

573. He testified that the military action underway when Tripkovic died was based on an effort to surprise some Muslim forces grouping on the Medjedja-Zepa road in the insolated Serb villages of Kocari, Gornja/Donja Lijeska, Han brdo and Kopito.⁷⁶⁵

⁷⁵⁵ T.4599/15-4601/15;P241.

⁷⁵⁶ T.4601/2-4629/25.

⁷⁵⁷ 1D108.

⁷⁵⁸ T.4245/12-13. (private session)

⁷⁵⁹ T.4246/1-4 (private session)

⁷⁶⁰ T.4248/3-5. (private session)

⁷⁶¹ T.4250/24-4251/19. (private session)

⁷⁶² T.4252/4-5. (private session)

⁷⁶³ T.4252/11-4253/3. (private session)

⁷⁶⁴ T.4253/20-4254/2.

⁷⁶⁵ T.4254/3-17.

574. He testified that a group of 40-50 men were prepared by the Command to be dispatched to the region, from among the members of the brigade and the reserve police.⁷⁶⁶ He testified that Tripkovic and Perica Markovic led this contingent of personnel.⁷⁶⁷

575. The witness testified that he personally saw Milan Lukić amongst these persons being dispatched to the Zepa-Kopito-Lijeska-Sjemec area.⁷⁶⁸

576. The radio equipment used to communicate with this group was a RU12 communication device that was in the car of Vlatko Tripkovic – when he was killed contact was lost.⁷⁶⁹

577. MLD7 testified that the Višegrad Command then had to get in contact with the Rogatica Command to have communications relayed to the forces at Kopito via messenger.⁷⁷⁰

578. He testified that until a group could be put together to set out to comb the area and secure the road, a no man's land existed.⁷⁷¹ The operation to secure the road could not be carried out until 15 June 1992.⁷⁷²

579. Mr. Stevan Cole of the Prosecution, in cross-examination of this witness, shied away from asking about the evidence relating to Milan Lukić's Alibi, instead preferring to attack the witness to ask what was alleged to have been occurring in the town. The witness did confirm hearing rumors of a Pionirska house burning, but knew nothing more.

580. When asked about Prosecution witnesses who talked of taking a bus convoy on the 14th, the witness testified that they certainly could not have taken a bus convoy on that day because the road was blocked until the afternoon of the 15th.⁷⁷³

⁷⁶⁶ T.4254/21-4255/11.

⁷⁶⁷ T.4255/15-19.

⁷⁶⁸ T.4256/12-15.

⁷⁶⁹ T.4256/16-4257/13.

⁷⁷⁰ T.4257/14-21.

⁷⁷¹ T.4258/25-4259/24.

⁷⁷² T.4259/25-4260/11.

⁷⁷³ T. 4283/3-10.

581. The position where Vlatko Tripkovic perished was 10 kilometers away from Kopito, about 3-4 kilometers from the lines of the Višegrad Brigade.⁷⁷⁴

582. Thus, MLD7 corroborated and confirmed the same series of events testified to by MLD4 and Goran Djeric, involving the forces sent to Kopito and the death of Vlatko Tripkovic, and the return of these forces only on 15 of June 1992 to Višegrad.

583. Another witness who corroborated portions of the alibi testimony was MLD24 – who testified as to the death of Vlatko Tripkovic, and how the initial news, as reported to him by Milan Lukić's parents, was that Milan Lukić had been killed at Kopito.⁷⁷⁵

584. Witness VG-136 was brought by the Prosecution in an attempt to rebut the alibi of Milan Lukić for his whereabouts on 14 June 1992. This witness stated that she saw Milan Lukić get on a bus at the Višegrad Town center on that day.⁷⁷⁶ However, as part of her testimony the witness confirmed that they did not know Milan Lukić prior to that day, and only recognized him because people told her.⁷⁷⁷ In particular she claimed that a neighboring passenger had immediately whispered Milan's name as he got on the bus.⁷⁷⁸ However, that person named by the witness testified under oath in these proceedings and in relation to the same event claimed that he too did not know this was Milan Lukić and only learned that fact later.⁷⁷⁹ This fact would seem to impeach VG-136, and thus her testimony cannot be given any weight in defeating the alibi so many other witnesses confirmed for Milan Lukić.

585. Another inconsistency that affects this Prosecution witness is her fantastic testimony about watching a man being roasted alive on a spit by the roadside.⁷⁸⁰ Not a single other witness claimed to have seen such a horrific sight, and it seems that exaggeration is rampant in this account.

586. VG-136 also has difficulty in accounting for her certainty as to the date which is the critical aspect of alibi rebuttal. This is particularly true given that there has been varied

⁷⁷⁴ T.4287/24-4288/6.

⁷⁷⁵ T.5052/1-5054/21.

⁷⁷⁶ T.6800/11-6802/10.

⁷⁷⁷ T.6816/20-6817/3.

⁷⁷⁸ T.6814/1-6815/15

⁷⁷⁹ T.530/4-14.

⁷⁸⁰ T.6812/13-6813/19.

testimony about convoys being cancelled during this period because the roads were blocked due to fighting.⁷⁸¹

587. Lastly, the veracity of this witness' account has to be appraised based upon her reluctance to admit from whom she heard "bad things" about Milan Lukić.⁷⁸² Her reluctance to give the full story leaves open the possibility that she is embellishing her testimony to cover for other persons who allege to have suffered ills but are not here, perhaps for unindicted crimes. We do not know because she refuses to tell us what she has heard from whom.⁷⁸³

588. Given the totality of the evidence, there exists a reasonable, even highly probable inference that Milan Lukić was at Kopito 13 June to 15 June 1992 and thus could not have been at Pionirska Street to take any part in the alleged house burning and murder of 70 persons.

C. MILAN LUKIĆ CANNOT BE FOUND GUILTY OF THE BIKAVAC INCIDENT DUE TO AN UNREBUTTED ALIBI

589. Although the Defense of Milan Lukić was not able to bring a direct alibi witness as to the Bikavac incident, this was not due to any lack of diligence on their part. The Prosecution with the tacit acquiescence of the Trial Chamber, by way of secret contempt proceedings, outed the identity of a protected witness, MLD2, who was then subjected to harassment and pressure from the Bosnian Muslim Secret Service police. This malfeasance is discussed elsewhere in this brief, and demonstrates the bad faith of the prosecution in these proceedings.

590. However, we did have indirect evidence supportive of the alibi proffered for the Bikavac incident. Likewise we have evidence of an independent nature, tending to prove that the Bikavac alleged fire did not happen, with the sole witness on that count, Zehra Turjaćanin, shown to be a liar. That too is discussed elsewhere in this brief.

⁷⁸¹ See VG141.

⁷⁸² T.6821/25-6822/15.

⁷⁸³ T.6823/23-6824/16.

591. However we do have the testimony of MLD10 relating to her knowledge of the purported alibi of Milan Lukić for St. Vitus Day (27 June 1992). MLD10 testified that her father confirmed to her after the war that indeed Milan Lukić had given the care package to him, and both her father and brother had spent time in the company of Milan Lukić at the Lukić family home on St. Vitus day.⁷⁸⁴

592. Although not direct alibi evidence, it does present a reasonable inference that verifies the alibi of Milan Lukić, and thus casts doubt that he could be at the Bikavac location.

593. This witness was brought during the rebuttal case to try and establish the presence of Milan Lukić at Bikavac on 27 June 1992, and thus defeat the alibi for the same. VG-94 testified about a lot of extraneous matters, including unindicted yet inflammatory alleged crimes, and was very limited in her alibi rebuttal role. At the outset, it should be noted this witness cannot be assessed without the caveat that she was a member of the Association of Women Victims of War, and gave a statement prepared by Bakira Hašević, which was never disclosed to the defense.⁷⁸⁵ The witness made clear that, in order to receive benefits as a civilian victim in Bosnia, she was required to be a member of Hašević's organization.⁷⁸⁶ Given everything that this Chamber has heard about Bakira Hašević and her interference in these proceedings and with witness preparation, the veracity of this witness' testimony must be taken with a grain of salt.

594. In addition, it should be noted that this witness testified that she did not know Milan Lukić, and claims that her identification of Milan Lukić comes from one of his neighbors, who merely told her that Milan Lukić was back in Višegrad and offered and gave help and assistance to her.⁷⁸⁷ There is no explanation for how that image of a helpful Milan Lukić got connected in her mind to the person she later encountered. Although VG-119 twice affirmed that she only learned of Milan Lukić after her first encounter with him⁷⁸⁸, she steadfastly said it was based on her contact with Ms. Repuh, even though she had NO contact with Ms.

⁷⁸⁴ T. 3965/12-3966/1.

⁷⁸⁵ T.7032/13-25.

⁷⁸⁶ T.7033/1-7.

⁷⁸⁷ T.7035/19-7036/5;7038/24-7039/3.

⁷⁸⁸ T.7037/1-15.

Repuh after her encounters with the gentlemen she calls Milan Lukić.⁷⁸⁹ This is inconsistent, and cannot be logically reconciled. She stated she was never introduced to Milan Lukić.⁷⁹⁰

595. After the Repuh story falls through the witness tries to claim she knew of Milan Lukić because of the Behia Zukić killing.⁷⁹¹ That is something not previously disclosed for her.

596. The problems keep mounting for this witness. When confronted with her prior statements, the witness could not answer why she described Milan Lukić as being 35 years old, in 1992 and with a prominent birthmark on his face.⁷⁹²

597. Likewise she could not explain why the partially started statement for the Prosecution attributed initially the wrong dates for the allegations as to Bikavac.⁷⁹³

598. Based on the foregoing it would be inappropriate to place much weight on the testimony of this obviously confused witness.

599. Given the totality of the evidence, we believe that viewed in the light most favorable to the Accused as is mandated by the principle of *in dubio pro reo*, this count too must be dismissed.

VII. DEFENSE SUBMISSIONS ON SENTENCING

600. Pursuant to Rule 86(c) of the Rules of Procedure and evidence of the ICTY, the parties are required to cover sentencing issues in closing arguments.

601. Given the unrealistic and it is respectfully submitted unreasonable time period given to the Defense for closing arguments by the Trial Chamber, we therefore in order to preserve our client's rights under the Rules, must take the opportunity to discuss sentencing briefly within this final brief.

⁷⁸⁹ T.7038/20-7039/15.

⁷⁹⁰ T.7039/24-7040/4.

⁷⁹¹ T.7034/9-15;7039/9-11.

⁷⁹² T.7052/1-12;7040/5-7042/20;1D227,P335

⁷⁹³ T.7044/14-7048/4.

602. A conviction would be in error of justice; a high sentence a further nostrum for the pains suffered in the region.

603. Although the Defense for Milan Lukić respectfully submits that he should be acquitted of all the counts and charges in the Indictment, the following arguments are respectfully submitted for the Chamber's Consideration.

604. The Defense submits that should the Trial Chamber find Milan Lukić guilty of any or all counts in the indictment, it ought to impose a sentence in accordance with articles 23(1) and 24⁷⁹⁴ of the Statute and with Rules 101 and 87(C).

605. The Defense also submits that in fitting the penalty to the individual circumstances of the accused and the gravity of the offences for which he would have been found responsible⁷⁹⁵, it is necessary to:

- a. Consider only those matters in sentencing which have been proved beyond reasonable doubt against the accused in sentencing, including any aggravating factors suggested by the prosecution⁷⁹⁶; and
- b. Take into account any mitigating factors - which have been established by the Defense on the balance of probabilities⁷⁹⁷.

606. Further, and in line with recent Appeals Chamber Judgments, the Defense suggests that the Trial Chamber, as a matter of principle, ought not consider crimes against humanity to attract a higher sentence than war crimes⁷⁹⁸.

⁷⁹⁴ The Defense notes that Article 41(B) of the Criminal Code of the Socialist Federal Republic of Yugoslavia (1977) (the "FRY Criminal Code") is not dissimilar to the provisions of article 24 (2) of the ICTY Statute and Rule 101 of the Rules of Procedure and Evidence. It also emphasizes that consideration should be given to: "...all the circumstances bearing on the magnitude of the punishment (extenuating and aggravating circumstances), and in particular, the degree of criminal responsibility, the motives from which the act was committed, the past conduct of the offender, his personal situation and his conduct after the commission of the criminal act, as well as other circumstances relating to the personality of the offender".

⁷⁹⁵ *Kupreskić* AJ, para.442, *Delalić* AJ, para 717; and Art 24(2) of the Statute, which states that the Trial Chamber in imposing the sentences "should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person." See also *Aleksovski* AJ, para182; *Jelisić* AJ, para.94.

⁷⁹⁶ *Delalić* AJ, para.763.

⁷⁹⁷ *Kunarac* TJ, para.847; *Prosecutor v Sikirica* et al, Case IT-95-8-S (Sentencing Judgment)13 Nov 2001 ("Sikirica Sentencing Judgment"). par 110.

⁷⁹⁸ *Tadić* Appeal Sentencing Judgment, par.69 ("The Appeals Chamber has taken account of the arguments of the parties and the authorities to which they refer, inclusive the previous judgments of the Trial Chambers and the Appeals Chamber of the International Tribunal. After full consideration, the Appeals Chamber takes the view that there is in law no distinction between the seriousness of a crime against humanity and that of a war crime. The Appeals Chamber finds no basis for such a distinction in the Statute or the Rules of the International Tribunal construed in accordance with customary international law; the authorized penalties are also the same, the level in any particular case being fixed by reference to the circumstances of the case. The position is similar

A. REQUIREMENT TO ADDRESS SENTENCING IN CLOSING ARGUMENTS

607. At the outset of its submissions on sentencing, the Defense wishes to express its criticism of the Amended Rule 86 (C) requirements to address matters for sentencing in closing arguments.⁷⁹⁹ The purpose of the closing submissions (both oral and written) ought to be the final opportunity for the Defense to raise matters pertaining to the overall acquittal of its client. Whilst the 98 bis procedure provides a forum for a plea for acquittal at the end of the Prosecution case, the Defense is effectively deprived of this opportunity once the totality of the evidence has been presented to the Trial Chamber. It is an extremely difficult task to file appropriate recommendations as to sentencing when the charge or charges for which a person has been convicted are, as yet, unknown. Further, Rule 86(C) makes it impossible, from a practical point of view, for an accused person to give evidence of remorse (which is significant for the purposes of sentencing) unless they plead guilty during the trial itself.

608. The Defense for Milan Lukić would submit that this is yet another indication of the Tribunal sacrificing the right of the Accused to be presumed innocent until proven guilty, in favor of expeditious trials which assist the Tribunal in meeting its completion strategy. The Defense respectfully disagrees with the present practice and call for the changes to rule 86(C) to be restored to their pre-1998 position, in which there were separate proceedings for trial and sentencing.

609. The Appeals Chamber views deterrence and retribution as the main general sentencing factors.⁸⁰⁰ With respect to the former factor, it appears to focus on general deterrence only rather than general and specific deterrence.⁸⁰¹ However the Defense believes that the sentencing aims of the Tribunal should also include community reconciliation. This objective is consonant with the Security Council's general aim of restoring and maintaining peace and security in the Former Yugoslavia.⁸⁰² These abridged political trials do little to reconcile the parties to the conflict and actually enflame and rekindle the antagonistic beliefs

under the Statute of the International Criminal Court, Article 8(1) of the Statute, in the opinion of the Appeals Chamber, not importing a difference"); and *Furundzija* Appeal Judgment, pars 243 and 247.

⁷⁹⁹ The Trial Chamber will recollect that this rule was amended on 10 July 1998.

⁸⁰⁰ For example, *Aleksovski* AJ, para.185; *Delalić* AJ, para.806.

⁸⁰¹ *Kunarac* TJ, para.839.

⁸⁰² See *Prosecutor v. Erdemovic*, Sentencing Judgment, November 19, 1996, para. 58; *Prosecutor v. Tadić*, Sentencing Judgment, November 11, 1999, para. 7.

of the parties, particularly where concerns for due process are sacrificed for political expediency in obtaining convictions at all costs.

610. We respectfully maintain that the principle of deterrence is not applicable in the present case.

611. There can be no specific deterrence, as the unique combination of circumstances is extremely unlikely to be replicated in the future. Milan Lukić poses no danger to the wider community and his actions during the war were a response to a chaotic and uncontrollable situation thrust upon him by the political leaders of the time who, on all sides, exploited people for their own personal benefit and wealth. These architects, far from being deterred from such conduct, are only emboldened and commended for their work, as they have been rendered immune from the grasp of justice and this Prosecution's attempts to paint Milan Lukić, a 24 year old waiter/bartender as the sole and main architect of war in Višegrad.

612. Likewise, general deterrence should also play a very limited role in the sentencing. The purpose of general deterrence is to send a signal to potential criminals that a sanction will be imposed for a particular type of behavior.

613. Retribution does not emphasize a societal value in punishing an individual. It is instead predicated on issuing a sanction because the nature of the offence in question merits a penalty. Retribution, within the context of the Tribunal, is a valid sentencing goal for those high level Accused of planning and committing horrendous crimes such as ethnic cleansing, large scale detentions, mass rape and mass executions. The Accused in the present case are charged with offences, which are much lower on the relative scale of culpability. Milan Lukić did not in 1992 constitute a threat to international peace and security. He played no role in large-scale planning and organization of war crimes or crimes against humanity. The crimes alleged, if proved, were not systematic or organized, nor were they ethnically motivated. The comparatively low-scale gravity of the alleged offences must be tied into the potential retributive value of any sentence imposed.

614. Reconciliation should be a paramount consideration in determining any sentence for this Accused. While the importance of punishing those responsible for committing grave atrocities cannot be overemphasized, contributing to the process of peace building and

reconciliation is equally vital. The Tribunal's sentence should consider not just the impact on Milan Lukić but also on the wider community from which he comes. Where an Indictée is convicted of acts which are short-lived, committed during a time of complete chaos, and which are explainable given the circumstances, the background circumstances ought to be taken into consideration.

B. MITIGATING FACTORS

615. Likewise, the Trial Chamber should note that the Accused has no obligation to plead guilty and in fact has the right to remain silent (which he chose to exercise in the instant matter). As a result, the Tribunal should not regard the fact that Milan Lukić did not plead guilty, and exerted his right to present a vigorous Defense as an aggravating factor.

i. Milan Lukić did not voluntarily join in the war, he was forced into service

616. One mitigating factor that has to be considered in the event this Trial Chamber convicts Milan Lukić on one or more counts, are the circumstances of how and why he came to Višegrad after the hostilities started.

617. Mr. Milan Lukić was neither a paramilitary, nor a volunteer, nor a mercenary. Indeed he did not go to enter the war willingly, nor for personal benefit.

618. Milan Lukić was a hardworking and gainfully employed 25 year old lad who worked abroad and lived in Belgrade. He had persevered and toiled at work in order to save up and purchased an apartment in Belgrade before the war even began.⁸⁰³

619. Zeljko Markovic described him as a paragon of gentlemen-like behavior, a modest person of modest means who used to sell bottles of juice and food vouchers at the bus station to earn money.⁸⁰⁴

⁸⁰³ 1D239.

⁸⁰⁴ T.3844/18-3845/5.

620. Prior to the war in Bosnia he never showed any traces of intolerance towards persons of different ethnic groups, let alone Muslims.⁸⁰⁵

621. In early May, after the hostilities had already erupted in Višegrad, Milan Lukić returned from Switzerland, and told Zeljko Markovic that he needed to obtain a car to go to Višegrad because of his ailing mother.⁸⁰⁶

622. The plan was to rent an automobile in Belgrade, travel to Višegrad, get his mother, and return to Belgrade with his mother.⁸⁰⁷

623. That Milan Lukić intended to return immediately from Višegrad via rental car is demonstrated by the fact that he put down a deposit of 1000 Swiss francs, which the evidence shows was a treasure, a great wealth, where a policeman's entire salary could only purchase one German Mark of hard currency.⁸⁰⁸ Such a deposit would be forfeited by Milan Lukić had he not planned on returning immediately with the Rental Car.

624. Zeljko Markovic described how he accompanied Milan Lukić to Višegrad, and how at a checkpoint the Višegrad Police instructed Milan that he had to register/report to the Višegrad SUP (Police Station).⁸⁰⁹ The record reflects that after being in the Police Station 45 minutes or so, Milan Lukić came out dressed in an ill-fitting and funny looking police uniform, accompanied by police officers.⁸¹⁰ Markovic testified that Milan explained to him that he had to stay, that he had been mobilized into the reserve force of the Police, and was to be in the security escort of Commander Tomic.⁸¹¹

625. Markovic testified that he could see that Milan was upset over these developments, as the other policemen encouraged him to get in the car and that he would be escorted back to the border.⁸¹²

⁸⁰⁵ T.3845/8-17.

⁸⁰⁶ T.3846/4-3848/4.

⁸⁰⁷ T.3848/12-3849/6.

⁸⁰⁸ T.3851/11-3852/1.

⁸⁰⁹ T.3853/3-11.

⁸¹⁰ T.3855/4-13.

⁸¹¹ T.3855/13-18.

⁸¹² T.3855/22-3856/14.

626. Markovic recalled that the next time he saw Milan in Belgrade, 8 June 1992, Milan was very tense, and how he exclaimed he never would had returned to Višegrad if not for his mother, that he could have stayed in Switzerland.⁸¹³

ii. Milan Lukić exhibited good character and assisted persons of Muslim ethnicity as much as possible

627. The evidence of MLD10, an ethnic Muslim, was that Milan Lukić was friends with two of her brothers,⁸¹⁴ who were Muslims, and who ended up as fighters on the Bosnian Muslim armed forces.⁸¹⁵

628. It was said that Milan Lukić was very thoughtful and kind towards all people regardless of their nationality.⁸¹⁶ He was said not to distinguish between people based on their ethnicity and never made insults against Muslims.⁸¹⁷

629. MLD10 testified that she asked Milan Lukić's assistance to locate her family in Višegrad and deliver a care package to them.⁸¹⁸ She was able to confirm with her father after the war that Milan Lukić had honored his promise to her and how Milan Lukić had made it possible for her family to move to a safe place.⁸¹⁹

630. Anka Vasiljević also offered testimony as to the good character of Milan Lukić. She testified that she knew Milan Lukić since 1992.⁸²⁰ She testified how Milan Lukić once offered her his assistance to track down her third-grade aged son, who was lost.⁸²¹

631. Mrs. Vasiljević described Milan Lukić as someone who was very warm, loved all children, gave out sweets to kids, was always joking and tried to keep up everyone's spirits.⁸²² She said he was a good man, that was very correct towards everyone, and everyone

⁸¹³ T.3858/17-23.

⁸¹⁴ T.3946/13-15;1D11.

⁸¹⁵ T.3952/18-23

⁸¹⁶ T.3951/13-14.

⁸¹⁷ T.3951/18-22.

⁸¹⁸ T.3954/22-3955/1;3957/12-3958/1.

⁸¹⁹ T.3958/15-3959/1;3965/21-3966/1.

⁸²⁰ T.4186/21.

⁸²¹ T.4190/2-21.

⁸²² T.4191/19-25.

in town adored him.⁸²³ During the war he had a girlfriend who was a doctor, described by Mrs. Vasiljević as “a stunning beauty, I don’t think I’d ever seen a woman as pretty as her in my whole life.”⁸²⁴

632. MLD1, an ethnic Bosnian Muslim, described in great detail how Milan Lukić assisted his departure from Višegrad with his girlfriend, and then hosted them in Belgrade before taking them to Novi Pazar.⁸²⁵

633. We heard testimony that after the war Milan Lukić played host to the International Forces that had been inserted as peacekeepers in Bosnia, and donated the use of an office for free to one of the democratic opposition parties to the SDS.⁸²⁶ Indeed, the SDS authorities were involved in the shooting death of Novica Lukić, Milan Lukić’s elder brother who was a member of the opposition party that opposed the SDS.⁸²⁷

634. MLD20 testified that Milan’s best friend growing up was a Muslim.⁸²⁸ MLD20 testified that the young Milan Lukić never caused any problems and behaved well towards everyone, including Serbs, Muslims, and older people.⁸²⁹ Milan Lukić never engaged in fights or quarrels and was a positive, upbeat person.⁸³⁰

635. MLD17 testified that Milan Lukić was an exceptional lad with a cheerful disposition, good hearted, and that he treated all neighbors super.⁸³¹ MLD17 said he did not make distinctions on how he treated people, irrespective of nationality.⁸³²

C. INDIVIDUAL CIRCUMSTANCES

636. Milan Lukić’s detention in The Hague has caused significant difficulties for his family. Not only is he unable to care for his two minor children, but is he also unable to contribute to the care of his very sick and elderly parents.

⁸²³ T.4192/10-21.

⁸²⁴ T.4203/1-2.

⁸²⁵ T4326/6-4328/17.

⁸²⁶ T.4429/3-25.

⁸²⁷ T.4431/1-21.

⁸²⁸ T.4486/4-6.

⁸²⁹ T.4499/11-12.

⁸³⁰ T.4499/16-23.

⁸³¹ T.4700/20-4701/1 (private)

⁸³² T.4701/9-11 (private)

637. Prior to the conflict, Milan Lukić was a hard-working, law-abiding and productive citizen. The Defense respectfully submits that this should be a mitigating circumstance for the purposes of sentencing. The evidence is clear that he did not have any criminal record before the chaos and war that erupted in Višegrad in 1992.⁸³³

i. Analysis of Dr. George Hough.

638. Likewise, the individual circumstances of the Accused as detailed by the Psychological analysis of Dr. George Hough must be taken into account to determine what sentence is appropriate. Dr. Hough's report⁸³⁴ and his testimony cover a multitude of the personal characteristics of Mr. Lukić's life that are relevant for the Court to consider when evaluating his Individual Circumstances, and determining his *mens rea* and/or his ability to stand up to persons who were in a power position over him,⁸³⁵ both in terms of the positions that they held during the war,⁸³⁶ and the positions of trust they had held earlier in his life⁸³⁷.

639. Dr. Hough's analysis of Milan Lukić was based upon multiple days of interviews of Milan Lukić at the UNDU, totaling 24 hours.⁸³⁸ Dr. Hough described Mr. Lukić as being very polite, cooperative, and forthcoming in his interactions with him.⁸³⁹ Dr. Hough opined that the aggregate of his report is a reliable and valid report on Milan Lukić's current emotional and cognitive state.⁸⁴⁰

640. Dr. Hough initially deals with the life history of Milan Lukić. Milan Lukić came from a loving family, and a fortunate upbringing.⁸⁴¹ He did state that Milan's family had a hard time during the Second World War, and under the Communist regime, losing both

⁸³³ 1D234,1D236.

⁸³⁴ 1D203.

⁸³⁵ Branimir Savovic and Risto Perisic

⁸³⁶ Chief of Police and President of the Crisis Staff.

⁸³⁷ Both were his teachers in school.

⁸³⁸ T.6286/20-25.

⁸³⁹ T.6287/5-11.

⁸⁴⁰ T.6288/21-25

⁸⁴¹ T.6291/1-10.

grandfathers, one who was killed, the other who was jailed.⁸⁴² He had a close-knit family and as the youngest child was protected somewhat.⁸⁴³

641. Although not an intellectual striver, Milan Lukić's academic progress was as a relatively well adjusted student.⁸⁴⁴ Dr. Hough commented that Milan seemed to make friends easily, including among Muslim children.⁸⁴⁵ According to Dr. Hough, Milan Lukić didn't harbor any particular prejudices or preconceived notions about people that were from a different culture/group than his.⁸⁴⁶ The lack of a problem with alcohol/drugs and the law were also noted.

642. As to Milan's work attitude, Dr. Hough stated that Milan values work, and is valued by employers, engaging in manual labor, and had never been disciplined or fired from employment.⁸⁴⁷

643. Dr. Hough concluded that Milan's narrative was bifurcated into two parts, the relatively tranquil life before the war, and then the war period, when everything changed for him and the world around him.⁸⁴⁸ Per his discussion with Dr. Hough, Milan Lukić's induction into the war was slow, first being shocked by the media reports on television while he was still in Switzerland.⁸⁴⁹

644. Milan Lukić reported giving donations to refugee causes, irrespective of what group was hosting the cause.⁸⁵⁰ Dr. Hough confirmed that the return to Višegrad was fueled by a desire to check on his parents, and that an old school professor was in charge of the Police, and he pressed into the service of the Police.⁸⁵¹ Dr. Hough reported that Milan did not seem to catch on to the seriousness of the situation until the Uzice Corps left Višegrad.⁸⁵² According to Dr. Hough, Lukić's induction into the war was passive in nature, "going along

⁸⁴² T.6291/11-20

⁸⁴³ T.6292/11-17.

⁸⁴⁴ T.6293/15-19

⁸⁴⁵ T.6294/2-3

⁸⁴⁶ T.6294/17-21

⁸⁴⁷ T.6297/3-13

⁸⁴⁸ T.6299/24-6300/5.

⁸⁴⁹ T.6300/6-11

⁸⁵⁰ T.6300/12-15

⁸⁵¹ T.6301/17-6302/16.

⁸⁵² T.6301/16-22.

with the flow”, into the mobilization and finding oneself with no training doing police work.⁸⁵³

645. Milan Lukić disavowed any connection to the White Eagles, and told Dr. Hough that he was hurt and disillusioned when the commander and several of his friends were killed and thus went into the service of the Military instead of the Police.⁸⁵⁴

646. Milan’s role as a policeman was described as low level, essentially acting on lists that were generated by superiors of “extremists” to be rounded up for interrogations; Lukić always introduced himself wherever he went because he viewed himself as a professional policeman.⁸⁵⁵

647. Dr. Hough reported that Lukić saw combat in the military, and acknowledged taking lives in combat, within the bounds of customs of war.⁸⁵⁶ Dr. Hough mentioned the extreme propaganda that was being fed through the media in the region, but Milan’s denial that the propaganda had an affect on him.⁸⁵⁷ Milan described himself to Dr. Hough as someone who had seen the world and risen above his peasant origin.⁸⁵⁸

648. Dr. Hough described that the psychological testing performed on Milan Lukić showed him to be a man of average intelligence.⁸⁵⁹ According to Dr. Hough, Milan Lukić is more a follower than a leader, someone who wants to please authority, and strives to put his best foot forward, someone who was never initiated any position of leadership, a man in the undistinguished middle.⁸⁶⁰ Milan Lukić, according to Dr. Hough, is a man who’s quite obedient to authority.⁸⁶¹

⁸⁵³ T.6301/23-6302/4.

⁸⁵⁴ T.6304/6-11

⁸⁵⁵ T.6304/18-6305/7.

⁸⁵⁶ T.6305/10-20.

⁸⁵⁷ T.6308/2-23.

⁸⁵⁸ T.6309/5-13.

⁸⁵⁹ T.6313/17-25.

⁸⁶⁰ T.6314/21-6315/24.

⁸⁶¹ T.6319/8-9.

VIII. RELIEF REQUESTED

WHEREFORE, For the foregoing reasons the Defense respectfully requests that this Honorable Trial Chamber enter an Order and Judgment on acquittal on all charges alleged in the Second Amended Indictment.

Word Count: 50,607

Respectfully Submitted by:



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Dated this 13th Day of May 2009
Albuquerque, New Mexico, USA and The Hague, Kingdom of the Netherlands